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GENERAL HEADINGS.



## Cases Reported this Week.



# Current Topics.

### The New County Court Emergency Rules.

WE PRINT elsewhere two new sets of County Court Emergency Rules which have been made to settle the practice under the Courts (Emergency Powers) (No. 2) Act, 1916 (*ante*, p. 542). The one set gives effect to section 1 of the Act, which makes various changes as to proceedings by mortgagees. Leave is now required for the appointment of a receiver and for the institution of proceedings for foreclosure or for sale in lieu of foreclosure, and changes are made in the County Courts (Emergency Powers) Rules, 1914, so as to adapt them to this extension of the original Act. The second set gives effect to section 2 of the same statute—the Courts (Emergency Powers), No. 2, Act, 1916. Under section 1 (2) of the Increase of Rent, &c., Act, 1915, no premium can be required on the grant of a lease of a house within the Act. The *Marquis of Bute's case* (*ante*, p. 528) shewed that this would not work, since it prevented the grant at a premium of a long lease to a purchaser of a small house, however beneficial this might be to him. Accordingly section 2 of the recent Act confers on the county courts the power to authorize such leases, and the new rules prescribe the mode of application for this purpose. The first set of rules are already in operation; the second set commence on the 10th inst.

### Lands in Military Occupation.

THE Defence of the Realm (Acquisition of Land) Bill, which has just been read a second time in the House of Commons, is an interesting attempt on the part of the Government to anticipate some of the difficulties which will arise at the close of the war. Under the Defence of the Realm Acts and Regulations the Military Authorities have exercised the power of taking possession of land and constructing buildings and works thereon; but on the termination of the war these lands will revert to the owners, and, according to the ordinary rule, all the buildings and works affixed to the freehold will revert with them. Moreover, it may be expedient to retain possession of the land for a time after the war. The Bill is intended to authorize such continuance in possession for a limited time—three years, and, with the consent of the Railway and Canal Commission, a further four years—and also to avert the loss of the value of the buildings and works. For the latter purpose, power is taken either to remove the buildings and works, or to purchase the land, either by agreement or compulsorily,

but the power of compulsory purchase is not to apply to commons, which are only to be taken by agreement. This is the proposal of the Bill as drafted (clause 3 (7)), but the champions of common rights and open spaces—whose views have been voiced by Lord EVERSLEY—have naturally taken alarm, and it is obvious that a mere temporary necessity for the use of open spaces should not enable the Executive to take them from the public for ever. This would be a complete reversal of much beneficent work done in the past. The Government, in deference to the protest, have consented to except commons altogether, for even if these could only be taken by agreement, it is not clear that the interests of the public would be protected. As to the Bill generally, it raises important questions as to State acquisition of land, and seems to require for its proper consideration data as to the extent of land to be affected, which have not been furnished.

### The Continental Tyre Co.'s Case.

THE DECISION of the House of Lords in the *Continental Tyre Co.'s Case* (reported elsewhere) has in fact been decided on the ground that the secretary of the plaintiff company had no authority to institute the action; but Lord HALSBURY delivered a judgment in which he held that unlawfulness of trading with the enemy could not be excused by the ingenuity of the means adopted, and Lord PARKER, in order that the main point of the litigation should not pass without comment, laid down and developed the principle that an English company might assume an enemy character if it was in fact under the control of enemies. The judgments lack, perhaps, the clearness of that delivered by Lord READING on behalf of the majority in the Court of Appeal (59 SOLICITORS' JOURNAL, 232 1915, 1 K. B., 893), and although Lord PARKER said that his principles had the advantage of affording convenient and intelligent guidance to the public on questions of trading with the enemy, it may be doubted whether this is so. The Court of Appeal acted on the settled principle that a company is an entity distinct from those who compose it; and since it was merely a question of allowing the company to recover money due to it, not of allowing the money to go out of the country, there seemed in principle no objection to the action being brought. No doubt there is a serious principle involved in the control of an English company by enemy directors and shareholders; but this aspect of the matter is already provided for by the sections of the Trading with the Enemy Acts relating to the supervision, and, where necessary, the winding-up of the businesses of such companies. Lord PARKER very emphatically repudiated the idea that acts which were otherwise lawful might be rendered unlawful by the fact that they might tend to the enrichment of the enemy when the war was over. "It would be lamentable," he said, "if the trade of this country were fettered, businesses shut down, or money allowed to remain idle in order to prevent any possible benefit accruing thereby to enemies after peace. The prohibition against doing anything for the benefit of an enemy contemplated his benefit during the war and not the possible advantage he might gain when peace came." This seems sufficiently sound, and indeed obvious as the language of the forum, but we are not sure that it is the language of the market-place, or indeed of the Executive. The businesses which have been closed down—now over 200 in number—have, it may fairly be surmised, involved a good deal of the mischief to which Lord PARKER referred. But, of course, for practical purposes, the whole question of business relations with alien enemies has been very much embittered by the course of the war.

### Contracts and the Apprehension of War.

SEVERAL IMPORTANT points were decided by the Court of Appeal in *Mitsui & Co. (Limited)* v. *Watts, Watts, & Co. (Limited)* (*Times*, 30th ult.), on appeal from BAILHACHE, J. A charter-party for demising a steamer to carry goods from Mariopol, in the Sea of Azoff, to Japan was entered into on 5th June, 1914, before war broke out. The exceptions clause included "restraint of princes." The charterers asked for a ship under that contract, and on 1st September, 1914, the shipowners refused to provide one. At that date there was nothing to prevent a steamship entering the Black Sea, but on 27th September the Turks closed the Dardanelles. The shipowners excused their breach of contract on the ground that at the time they had a "reasonable apprehension" of the Dardanelles being closed—*i.e.*, of a "restraint of princes"; but the Court held that a "reasonable apprehension" of an event which will render performance either legally or physically impossible is no excuse for immediate repudiation of a contract, even should subsequent events, in fact, shew that performance would have ultimately proved impossible. The case is distinguishable from *Geipel* v. *Smith* (L. R. 7 Q. B. 404), which the shipowners relied on to support them. In that case a contract made prior to the Franco-German war for the carriage of goods to Hamburg became legally impossible of performance on the institution of a blockade of Hamburg by the French, and the issue of a British Proclamation enjoining strict neutrality on all British subjects; a blockade is a "restraint of princes." But the shipowners' contention appears to receive some support from *The Teutonia* (L. R. 4 P. C. 171), where a deviation in apprehension of war was held to be justifiable.

### Charter-Party Damages.

THREE POINTS, relating to damages, also arose in *Mitsui, &c.*, v. *Watts, &c.* (*supra*). The shipowners claimed that, since the charterers in any case could not have sent the goods to Japan, the actual damage suffered was not the result of their breach, but of an independent cause; therefore, only nominal damages were payable. This is a tempting argument, and *primâ facie* the damages certainly seem too remote. But SWINFEN EADY, L.J., met the point by suggesting that if the shipowners had provided a ship for the cargo, the charterers would have effected the usual insurance against loss by "restraint of princes," and so would have been in this position—either the cargo would have got to Japan, in which case no damage would have been suffered by them, or it would have been held up by "restraint of princes," in which case they would have obtained an indemnity against the damage under their policy. In either event the charterers must have escaped loss, so this loss was the inevitable consequence of the shipowners' breach, and substantial damages are recoverable on the principle laid down in *Hadley* v. *Baxendale* (9 Ex. 341). But next comes the problem, how are these damages to be assessed? Following Lord DAVEY'S rule in *Ströms Bruks Aktie Bolag* v. *Hutchison* (1905, A. C. 515, at page 529), the Court held that the damages were the difference between the price of the cargo in Japan and its value in England at the date of repudiation, plus the freight and insurance. Lastly, the Court had to ask whether clause 13 of the charter-party restricted the damages recoverable. This was the common form clause which provides—"penalty for non-performance of this agreement . . . damages not exceeding the estimated amount of freight." They held that this clause refers only to penalties for specific breaches, and not to general damages for a complete breach. It would be difficult to find a case in which three points so fundamental to the law of damages are all raised and decided.

### Nurses as "Soldiers."

WHEN Professor DICEY enunciated in the "Law of the Constitution" his famous epigram that Parliament is omnipotent to do anything except make a man a woman or a woman a man, he did not foresee some effects of the present European War. Certainly in 1837, when the Wills Act passed into law, no member of the Legislature which enacted it ever can have dreamed that eighty years later an Army nurse would be held to be a "soldier on actual military service" for the purpose of making valid an unattested will under the provisions of section 11. Yet this has been decided to be the correct interpretation of the statute by BARGRAVE DEANE, J., in *Re Ada Stanley* (reported elsewhere), which follows the similar decision as to a

"seaman" in *Re Hale* (1915, 2 I. R. 362, *ante*, p. 204). Certain privileges flow from this status; if the soldier dies on military service the administration is exempt from stamp duty (Stamp Act, 1815, Sched. Part III.), and even if the will is, in fact, attested, yet, since it requires no attestation, a legacy to an attesting witness is not invalidated by section 15 of the Wills Act (*Re Limond, Limond* v. *Cunliffe*, 1915, 2 Ch. 240). The Boer War supplied two important decisions on the meaning of "actual military service." A volunteer private sent in his name for war service, was medically examined, and sent into barracks, where he made his will; the will was held to be made on "actual military service" (*Re Hiscock*, 1901, P. 78). A private was in India with his battalion when the regiment received orders to "mobilize" for active service in South Africa; before any movement had, in fact, been made he sent a testamentary letter to a friend in England; this was held to have been made on "actual military service" (*Gattward* v. *Knee*, 1902, P. 99); for mobilization is the modern equivalent of the Roman "*in expeditione*." In the present case the nurse had received orders to embark when she wrote the letter propounded as a will—in other words, an order to mobilize—and therefore was "*in expeditione*."

### Damage by Zeppelin Bombs.

QUESTIONS AFFECTING the mutual responsibilities of landlord and tenant where a Zeppelin bomb does damage, neither foreseen in the contractual stipulations, nor insured against outside the contract, are among the least settled of minor war *quaestiones vexatae*. But a very peculiar case of the kind is *Barton* v. *Allocca* (*Times*, 30th ult.). In a lease of London business premises dated January, 1915, the landlords covenanted to do structural repairs. A bomb damaged the house and the party wall between it and its neighbour. The landlords came in to do repairs under a "dangerous structure" notice served on them by the local authority, and shored up the wall; then they waited, in accordance with their statutory duty under the London Building Act, 1894, until the Metropolitan Borough Council should have made the statutory award as to the respective liabilities of the co-owners of the party wall. In the meantime the tenant's business suffered; he refused to pay rent, and counter-claimed for breach of the covenant not to disturb him in the quiet enjoyment of his premises. The answer to the counter-claim seems reasonably clear. What the landlords did was done under the compulsion of a statutory duty and so was not actionable; and even had this not been so, the disturbance of quiet enjoyment seems to have been caused by the Zeppelin, not the landlord; the latter was only trying to abate the nuisance caused to his property by these extraneous tort-feasors. We need hardly add that the non-payment of rent is not excused by mere breach of his covenants by the landlord; only eviction, or a breach amounting to eviction, will terminate the tenant's liability for rent.

## The Casement Trial.

THE trial of CASEMENT for high treason raises some points which it may be interesting to notice, and which do not touch the questions—such as, whether treason outside the realm is within the Treasons Act, 1351 (25 Ed. 3, st. 5, c. 2)—likely to be argued on the appeal.

Immediately on the arraignment of the prisoner Serjeant SULLIVAN, K.C., who led for the defence, moved to quash the indictment as bad, on the ground just referred to—that it disclosed no offence known to English law. Now in *Lynch's case* (1903, 1 K.B. 444), a similar motion was made, between the arraignment and the plea, but was ruled out by the Court. Of course, in the case of any ordinary crime, such a motion is both possible and usual; but the authorities are to the effect that the Court has a discretion whether or not it will quash the indictment for insufficiency; the judges are not bound *ex debito justitiæ* to hear the motion, but may compel the defendant either to plead or demur to it; and this they generally do in crimes of great magnitude, such as perjury, forgery, or treason (Hawkins, Pleas of the Crown, II., c. 25, s. 146). Prior to the Court of Criminal Appeal Act of 1907, it was possible to raise the point as to the insufficiency of an indictment in two other ways besides that of a motion to quash it; a motion in arrest of judgment was possible after the verdict, and after sentence there was open a writ of error in the King's Bench Division. These remedies are no longer available, and, unless a motion to quash the indictment can be made at some stage of the proceedings, the defendant would appear to have no remedy for a defective indictment in cases of treason except an application to the Court of Criminal Appeal in the event of an adverse verdict. The Court came to the conclusion, in the exercise of its discretion, to allow the motion, but to postpone it until the termination of the case for the Crown, when the point was argued at length and the objection dismissed.

Next comes the interesting point of practice as to whether or not in treason cases the prisoner should be allowed to make statements on his own behalf. CASEMENT, in fact, made two written statements, one at the termination of the case for the Crown and the other after the verdict of guilty had been found by the jury. In former days, before 1898 when a prisoner was given the legal right to give evidence on his own behalf in the witness-box, it was customary to let him make a statement to the jury at some stage of the defence; but this was a matter of grace, not of right, and is no longer necessary now that a prisoner can go into the witness-box. Except the case of LYNCH in 1903, every State trial for treason took place prior to the Criminal Evidence Act of 1898, which effected this change, so that there are really no precedents as to the propriety, in cases of treason, of allowing the prisoner to make a statement instead of giving evidence on oath. As regards CASEMENT'S speech after the verdict, it is the invariable practice in every criminal trial for the clerk of arraigns, after a verdict of guilty, to ask the prisoner if he has anything to say why sentence should not be passed upon him according to law, but the prisoner is not usually allowed to do more in reply than make an appeal for clemency. In *Rex* v. *Brailsford* (1905, 2 K. B. 730), where the prisoners were found guilty after trial at bar of conspiracy to obtain false Russian passports, one of the prisoners desired to make a written statement on the state of Russian internal politics in mitigation of his crime, but this Lord ALVERSTONE refused to permit. The case, however, is not reported on the point. The propriety of allowing to CASEMENT the privilege granted him by Lord READING has been questioned in the *Times* by so high an authority as Sir HARRY POLAND.

Lastly, the conviction and sentence of CASEMENT has been followed by his formal degradation from the honour of Knighthood. At Common Law the forfeiture of titles and honours resulted automatically from the conviction which escheated the traitor's lands to the Crown, forfeited his goods and chattels, rendered his blood "corrupt," *i.e.*, debarred his issue from any rights of inheritance through him, and "attainted" the culprit himself, *i.e.*, debarred him from holding any title of honour. Presumably these legal results still follow from the conviction and sentence. But degradation from knighthood might be ordered by the Crown in other cases; of these there appear to be only three preserved on record. The first is that of Sir ANDREW HORSLEY, found guilty by a Court of Special Commission in 1322; the second is that of Sir RALPH GREY in 1468; and the third that of Sir FRANCIS MICHELL in 1621; the last was impeached by the Commons before the House of Lords for high crimes and misdemeanour. In each of these three cases the degradation was carried out with all mediæval ceremony; that of CASEMENT has been effected by the issue of Letters Patent under the Great Seal.

Under a general revision of American neutrality laws proposed to Congress almost every phase of activity in behalf of foreign Governments which has been prosecuted under the broad charge of conspiracy would be made specifically criminal.

# The Declaration of London

In the House of Commons on the 28th inst. Lord Robert Cecil announced that an Order in Council was about to be issued, withdrawing the Orders under which the Declaration of London has been adopted with modifications, and that a statement will be issued giving the reasons for this step. Pending the statement it would be superfluous to speculate as to the reasons, for the Government have always maintained—apparently with good ground—that the adoption of the Declaration gave it no validity as an International Convention; that it was merely a convenient statement of generally recognized rules of maritime war; and that it was only matter of form whether it was kept on foot for this purpose or not. On 28th October, 1915, Sir Edward Grey said in the House of Commons that the Declaration possessed no force, and where reference was made to any provision in it, this was solely because it was a convenient expression of some generally accepted rule of International Law. And on various occasions Lord Robert Cecil has maintained the same view. It was convenient, but only binding so far as it stated accepted law. "The fact that statements of law are in the Declaration of London does not add to or detract from their legal force" (House of Commons, 23rd December, 1915). And when pressed to issue the useful parts of the Declaration under some other name, he has replied that this was not worth while, since it was merely a matter of form (House of Commons, 6th January, 1916).

The Declaration of London arose out of Convention XII. of the Hague Conference, 1907. That Convention, which was not ratified by Great Britain, provided for the establishment of an International Prize Court. On this three questions arose:—(1) The desirability of such a Court; (2) the constitution of the Court; (3) the law to be applied by it. The last was regulated by Article 7, which provided that questions of law should be decided in accordance with any Convention in force between the litigant States, and, in default thereof, in accordance with the rules of International Law. Failing any rules generally recognized, the Court would decide "according to the general principles of justice and equity." It was the indefiniteness of these last two directions which suggested the desirability of codifying Prize Law before establishing an International Prize Court of Appeal, and the result was the Declaration of London of 1909.

It is well known that the Declaration has been the subject of keen attack, an attack which may, perhaps, be traced mainly to the efforts of one very able controversialist, Mr. Gibson Bowles; but it must not be forgotten that it was arrived at as a compromise between contending interests, and as such a compromise it received the approval of so competent an authority as the late Mr. Arthur Cohen, K.C., whose views were expressed in an article in *The Law Quarterly Review* for January, 1911 (Vol. 27, p. 9). At the end of the article he discussed and dissented from Mr. Gibson Bowles' views in "Sea Law and Sea Power." "In short," he said, "Mr. Bowles, in his excessive zeal for the rights of belligerents, seems to me most unduly to depreciate the skill, fairness, and equity with which the Codes relating to Contraband and Blockade are framed." It should be added that Mr. Cohen considered that the application of the doctrine of continuous voyage to absolute, but not to conditional, contraband introduced an irrational distinction, and it was only justifiable as a compromise. The provisions as to destruction of neutral prizes he regarded as a fair compromise. Similarly the late Prof. Westlake was in favour of the Declaration as a proper compromise. His views were set forth in a series of letters to the *Times* of 31st January, 6th and 9th February, 1911, and the Declaration is explained in his "International Law" (2nd ed. II., 255). And Lord Lindley supported the Declaration in an interesting letter to the *Times* of 6th June, 1911. But Prof. Holland was strong against the ratification of either Convention XII. or the Declaration of London, and expressed his views in a paper on "Proposed Changes in British Prize Law," read before the British Academy in June, 1911. He urged that both documents should be referred to a Royal Commission of experts.

The objections to the Declaration were founded on its alleged sins, both of commission and omission. Its articles dealt with Blockade (1-21); Contraband (22-44); Unneutral Service (45-47); Destruction of Neutral Prizes (48-54); Transfer to Neutral Flag (55, 56); Enemy Character (57-60); Convoy (61-62); Resistance to Search (63); Compensation for Wrongful Capture (64); and Final Provisions (65-71). The sins of commission arose mainly under Contraband and Destruction of Neutral Prizes. Lists of Contraband were set out, but foodstuffs were in the conditional list, and power was reserved to add to the lists, though the free list, which included raw cotton, could not be varied. The effect of the inclusion of foodstuffs as conditional contraband depended on Articles 33-35. The particular points of comment were that, though Article 33 made foodstuffs liable to capture only if destined for enemy forces or authorities, Article 34 raised a presumption of this destination if they were consigned to a "place serving as a base for the armed forces of the enemy"; on the other hand, Article 35 excluded the doctrine of continuous voyage in such a case. Critics of the Declaration said that an enemy would treat every important British port as a base—*i.e.*, a base of supply—for the armed forces, and that the food supply of the country would be imperilled. The other side urged that Great Britain gained by the abolition of the doctrine of continuous voyage, for foodstuffs could be consigned to a neighbouring neutral port—say, in France—and thus perform the greater part of the transport in safety. It would then be an easy thing, while Great Britain retained command of the Channel, to slip across to an English port. Moreover, the doctrine of continuous voyage was not, it was urged, wanted against Germany, who could get her supplies of foodstuffs from Russia or some other neighbouring country by rail. All this seems strangely unreal now, and shews that it is of little use to speculate as to the general effect of rules of Prize Law unless it is known how the various States are to be arranged as belligerent or neutral. The question of the destruction of neutral prizes had been brought to the front by the cases of *The Knight Commander* and other ships which had been sunk by Russian warships in the Russo-Japanese war. Feeling was strong against the Articles of the Declaration which sanctioned this practice, though only under exceptional circumstances. On the other hand, it was said that the practice of the world was against us, and neutrals were going to be sunk, Declaration or no Declaration—a forecast which events have justified.

The sins of omission were notably two: (1) in respect of the conversion of merchantmen into ships of war; and (2) as to the definition of enemy character. Convention VII. of the Hague Conference, 1907, provides for conversion, but does not settle the vexed question whether or no this can be done on the High Seas, and the Declaration of London contained no provision on the point; nor did it decide between domicil, whether ordinary or commercial, and nationality as the tests of enemy character; domicil being the British and nationality the French test, and perhaps the Continental test generally.

The Declaration formed the subject of a debate in the House of Lords on 8th, 9th, and 13th March, 1911, and though the speeches furnish much useful information as to the views taken of it, and of its probable effect, it led to no decisive action. It arose on a motion by Lord Desborough for the appointment, in accordance with Prof. Holland's suggestion, of a Royal Commission. The criticisms were directed to the points noticed above:—The possibility of food supplies in neutral ships being exposed to seizure as conditional contraband, on the ground that their port of destination was a base of supply for armed forces; the destruction of neutral prizes; and the want of provision against the conversion of merchant ships on the High Seas. An observation of Lord Halsbury's seemed opposed to all attempts to ameliorate war. The theory, he said, on which the authors of the Declaration proceeded was that, if war were made very polite, it could be got rid of altogether. Lord Ellenborough treated the whole thing as

impracticable. "Should we ever sit down and starve if we could bring food to Great Britain by tearing a sheet of paper to pieces?"—a curious anticipation of the German "scrap of paper" theory. An effort had been made to shew that Bristol could not be treated as a military base; but it was emphatically repudiated. Bristol was but a slight distance from Salisbury Plain. "Any hostile commander," said Lord DUNRAVEN, "must condemn Bristol as a port of supply." A notable contribution to the debate was made by the late Lord ALVERSTONE. "This subject of contraband, of continuous contraband, and of continuous voyage," he said, "is not a subject that I have had to get up for the purpose of this debate. It has been burnt in upon me by hours and days of study." He was concerned mainly with the food supply of Great Britain as an Island Power, a matter as to which he said Germany would have no fear in time of war. "Honestly I cannot see that there is any foundation for saying that things would be better under the Declaration than without it."

The matter came up for definite decision when the Naval Prize Bill of 1911 was introduced. The first two parts of the Bill proposed a useful consolidation of existing Prize Court statutes, with some amendments of procedure. The controversial matter lay in Part III., which authorized the Crown to concur in the establishment of the International Prize Court contemplated by Convention XII. of the Hague Conference, 1907. There were other parts to which it is needless to refer. The establishment of the Court involved the ratification of the Declaration of London, and the debates dealt with both matters. The second reading was carried in the House of Commons by 301 to 231, after a debate on 28th and 29th June, and 3rd July, 1911. A notable speech against the Bill was made by Sir ROBERT FINLAY, who treated the Declaration as guilty of sins of commission and sins of omission equally serious, and who maintained that others, and not Great Britain, would gain by the abolition of the doctrine of continuous voyage for conditional contraband. One sentence in his speech came prophetically near to present actualities:—"What an enormous advantage does the abolition of conditional contraband give to Germany!" Germany's supply would be through "Dutch and Belgian ports," a far cheaper means of transport than by rail. In a concluding speech Mr. ASQUITH urged that it was a great thing that food had been kept out of the absolute contraband list. But, as is well known, the Bill was rejected in the House of Lords (12th December, 1911, by 145 to 53), and here, again, Lord ALVERSTONE'S speech was noteworthy, mainly for his description of the making of Prize Law, which produced from Lord LOREBURN, C., the remark:—"Of course, everybody knows that English maritime law is the foundation of International Prize Law." It should be noticed that on 2nd June, 1911, the Imperial Conference had passed a resolution approving the ratification of the Declaration. This was unanimous, with the exception of Australia, which abstained from voting (Parl. Papers, 1911, Cd. 5745). The adverse vote in the House of Lords was not accepted by the Government as final, and on 7th August, 1913, Mr. ACLAND, the then Under Secretary for Foreign Affairs, intimated in the House of Commons that it was hoped to pass the Prize Court legislation and ratify the Declaration in the next Session.

But—"the best laid schemes o' mice an' men gang aft a-gley." The next Session had not concluded before the war broke out, and the Government found it necessary to determine what to do with the Declaration. They had the choice of ignoring it, or of adopting it with such variations as were essential. The latter course was dictated by precedent and convenience. Before the war—on 5th December, 1912—Sir EDWARD GREY, in the House of Commons, stated that although the Declaration, not having been ratified, was not binding as such on any country, yet in several instances belligerents had declared their acceptance of it. Similarly the United States in the Spanish-American War adopted the Declaration of Paris, although not bound by it. There was the additional reason in the present instance that, unless some common code was adopted, the Allies would each be administering a different system of Prize Law. In fact, the Declaration, with the modifications made by Great Britain, has been adopted successively by France (November, 1914), Russia (December, 1914), and Italy (June, 1915).

The Declaration was first adopted by an Order in Council of 20th August, 1914, and this was superseded by an Order of 29th October, 1914. There have been subsequent Orders of 20th October, 1915 (*ante*, p. 28), and 30th March, 1916 (*ante*, p. 406). Naturally the object of the Government was to eliminate such parts of the Declaration as seemed to diminish the belligerent rights of Great Britain where this would not unduly offend neutrals, and these parts were found in the Articles relating to contraband. The Declaration lists of contraband and non-contraband were excluded, and the Government has exercised the right throughout the war of making additions to the contraband lists as experience suggested. Further additions are made by a Proclamation last week which we print elsewhere. The doctrine of continuous voyage was introduced for conditional contraband, and further presumptions were raised as to enemy destination. This was to be presumed to exist if the goods were consigned to an agent of an enemy State, and also if they were bound to a neutral port consigned "to order," or if the ship's papers shewed no consignee, or a consignee in enemy territory. The hypothetical reasoning of the debates in Parliament went by the board, and in the actual circumstances of the war the continuous voyage doctrine was a great gain to England and a blow to Germany. It was also a blow to neutrals, but of these the most important was the United States, and the doctrine was, in fact, American rather than British, so she could not really complain. The Order of 20th October, 1915, excluded Article 57, which made the character of a ship depend on her registry, and revived the British doctrine that her real character could be inquired into. The Order of 30th March last in effect placed absolute and conditional contraband on the same footing as regards continuous voyage and proof of destination, and by excluding Article 19 applied the doctrine of continuous voyage to breach of blockade.

We should add that in the discussions of the Declaration in Parliament and elsewhere much attention was given to the effect of the Report of the Drafting Committee: was it binding or merely illustrative as regards the construction of the Declaration? It was adopted by the Order of 20th August, but dropped in that of 29th October, 1914, and the curious experiment of allowing the draftsman to explain his draft by a running commentary—a thing fatal to precise drafting—is not likely to be revived.

We should also add that the whole subject of the operation of Prize Law has been complicated by the special rules embodied in the Order in Council of 11th March, 1915 (59 SOLICITORS' JOURNAL, 352), which constituted in effect a blockade of Germany, but that is outside the scope of the present article.

The terms of the new Order by which the Declaration of London is to be set aside will be awaited with interest. We have tried to state in the foregoing remarks the reasons which have been urged for and against that document. It goes without saying that, taken as a whole, it was opposed to the interests of Great Britain in this war, but, assuming that an International Code of Maritime Law is desirable—and this can hardly be doubted—it cannot be framed so as to serve the interests of any one nation in all circumstances. It must be, as the Declaration of London was, a compromise. The future is too uncertain for it to be worth while to make any conjecture at the next attempt at codification, except to anticipate that such attempt will in due time be made.

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In the House of Commons on Monday, Mr. Harcourt, replying to a question by Mr. G. Terrell, said: Shares and debentures held by enemies in British companies of the nominal value of £1,300,000 have at present been vested by the Board of Trade in the Public Trustee for the purpose of sale. He has completed the sale of shares of the nominal value of £102,000, and is negotiating for the sale of the remainder. The shares have been sold by private treaty, and on the Stock Exchange in cases where there is a quotation. In several pending cases the shares are being put up for sale by public auction.

# Reviews.

## Easements.

A Treatise on the Law of Easements. By Charles James Gale, Barrister-at-Law. The Ninth Edition. By Thomas H. Carson, K.C. Sweet & Maxwell (Limited). 25s.

This work has been before the profession since 1839, and has during its nearly eighty years of usefulness received high judicial praise. Mr. Gale's "excellent Treatise on Easements," said Lord Wensleydale in 1860 in *Rowbotham* v. *Wilson* (8 H.L.C., p. 359), when he had the second edition before him. Of the seven editions since then, two—the sixth and seventh—were issued under the editorship of the present Solicitor-General, Sir George Cave, and we are glad to see that the new edition is the work of so eminent a lawyer as Mr. T. H. Carson. The subject of easements is, indeed, one of the most difficult in the law of property, and the judicial decisions which have been accumulating in recent years, and which show no sign of stopping, require careful, learned and judicious handling. Perhaps the best known of these is *Colls* v. *Home and Colonial Stores* (1904, A. C. 179), and Mr. Carson at p. 296 summarizes the conclusions which follow from the decision of the House of Lords in that case, and states the points to which, in aciordance with such conclusions, the evidence in an action for infringement of light should now be directed. An equally prolific course of litigation is the right of support as between the mineral and surface owners, on which *Rowbotham* v. *Wilson*, referred to above, is an interesting authority; and the *Butterknowle Colliery Co.'s Case* (1906, A. C. 305) and the *Butterley Co.'s Case* (1910, A. C. 381) are recent decisions on a subject which seems to be capable of frequent appeals to the final tribunal. Mr. Carson quotes at length from the late Lord Macnaghten's judgment in the former case, a judgment which he said in the latter had been delivered in the hope that he "might perhaps contribute something that might relieve counsel in a future case from going through all the cases on the subject that have ever been reported in this House and the Courts below." Certainly it would go a long way to solve the problem of the multiplication of authorities if a few hundred could be merged from time to time in the judgments of a Law Lord like Lord Macnaghten. But, as things are, we fear that counsel in their chambers will feel compelled "*petere fontes*" further back than a modern judgment, however authoritative, and to produce in Court the fruits of their research. But whether to such remote sources of the law, or to its later formulation, Mr. Carson's edition of Gale on Easements will prove, in all matters relating to the subject, a sure guide.

## Books of the Week.

**Powers.**—A Concise Treatise on Powers. By the late Right Hon. Sir George Farwell, Knt., late one of the Lords Justices of His Majesty's Court of Appeal. By C J. W. Farwell, assisted by F. K. Archer, Barristers-at-Law. Stevens & Sons (Limited). 35s.

**International Law.**—The Rules of Private International Law Determining Capacity to Contract. By F. T. Cheng, LL.D. (Lond.), Barrister at-Law. Stevens & Sons (Limited). 7s. 6d.

**Case and Comment.**—The Lawyers' Magazine, June, 1916. The Lawyers' Co-operative Publishing Co., Rochester, New York. 15 cents.

Massachusetts Law Quarterly, May, 1916. Massachusetts Bar Association, Boston, Mass.

# Correspondence.

## Treasure Trove in the City of London.

[*To the Editor of the Solicitors' Journal and Weekly Reporter.*]

Sir,—Will you permit me to take exception to one criticism which appears in your "Current Topic" on this subject in your issue of the 1st July?

You state: "If the City values its ancient privileges, it might have been expected to take the opportunity of maintaining them."

May I be allowed, as Solicitor to the Corporation of London, to point out to you that this is exactly the course which the Corporation took the moment the matter was brought to its notice, and it is because the Corporation insisted upon an observance of its ancient rights and privileges that the matter was so speedily arranged amicably.

You appear to take exception to the credit which has been given to the Right Hon. Lewis Harcourt, M.P., for the part he took in the matter as the Founder and Trustee of the London Museum and a Trustee of the British Museum.

May I take the liberty of pointing out that Mr. Harcourt is fully entitled to all the credit which he has received, inasmuch as the moment the rights of the Corporation were pointed out to him, he at once recognized them, and gave tangible effect to that recognition.

You appear to be unaware of the fact that a portion of the find acquired by Mr. Harcourt was not treasure trove at all, and therefore could not have been claimed by the Corporation; but it was considered far better, in the public interest, that the exhibits which contained treasure trove and other articles should, as far as possible, remain intact, and be divided between the British Museum, the Guildhall Museum and the London Museum, so that undoubtedly the public are gainers by the amicable settlement.

I have yet to learn that there was the slightest justification for the Corporation embarking upon litigation, with its rights fully recognized, for the simple purpose, as suggested in your article, of raising "interesting points."

Guildhall, E.C., July 4. Homewood Crawford.

[We are indebted to Sir Homewood Crawford for his information, and are sorry to have misrepresented in any way the attitude of the Corporation and to have thrown doubt on Mr. Harcourt's merits. If the usual course of holding an inquest under the Coroners Act, 1887, s. 36, had been adopted, the position would have been clear. Perhaps we may not improperly regret, in a professional sense, the loss of "interesting points," without questioning the wisdom of friendly settlement.—Ed. *S.J.*]

# CASES OF THE WEEK.

## House of Lords.

**DAIMLER CO. (LIM.) *v.* CONTINENTAL TYRE AND RUBBER CO. (GREAT BRITAIN) (LIM.).** 21st, 22nd, 24th, and 25th February; 30th June.

Company—Registration in England—Share Capital Held by Alien Enemies—Postponement of Right to Sue for a Debt during Hostilities—Disability of Alien Enemy Directors to Authorize Proceedings—Trading with the Enemy Act, 1914 (4 & 5 Geo. 5, c. 87), s. 2, sub-section (2) (b)—Proclamation Relating to Trading with the Enemy, 9th September, 1914, s. 5, sub-section 1.

*A company registered in England under the Companies Act, but the share capital of which was substantially wholly held by alien enemies, and having directors all resident in Germany, sued on certain bills of exchange, dated May and June,* 1914. *The defendants had accepted the bills before the declaration of war, but the bills had matured after the date when war was declared.*

*A full Court of Appeal* (Buckley, L.J., *dissenting*) *held that the company, being an entity distinct from its shareholders and directors, the payment of the bills was not "trading with the enemy," and that the company was entitled to sue during the continuance of the war.*

*Decision of the* Court of Appeal (59 Solicitors' Journal, 232; 1915, 1 *K. B.* 893) *reversed.*

Appeal by the defendants from a decision of the Court of Appeal (Lord Reading, C.J., Lord Cozens-Hardy, M.R., Kennedy, Phillimore and Pickford, L.JJ.; Buckley, L.J., *dissentiente*), which affirmed an order of Scrutton, J., in chambers, granting the plaintiffs leave to sign summary judgment against the defendants under order 14. The plaintiff company was incorporated under the Companies Acts in 1909 for the sale of German-made motor tyres. It had a capital of £25,000 in £1 shares. Of these 24,999 were held either by the parent German company or by subjects of the German Empire residing in Germany. The remaining one share was held by Mr. Wolter, who was born in Germany, but was resident in England, and had become a naturalized British subject. Mr. Wolter was the secretary of the company. At the outbreak of war there were four directors, of whom three resided in Germany. The fourth, Mr. Brodtmann, lived in England before the war, but left this country early in August, 1914. The litigation arose in this way. Bills of the value of between £5,000 and £6,000 in respect of goods sold to the appellant company before the outbreak of the war became due after hostilities had begun between this country and Germany. On the bills maturing payment was refused by the appellant company, and the respondents commenced the action out of which this appeal arose. The ground upon which the Daimler Co. resisted payment was (1) that it was illegal to trade with or pay money to or for the benefit of alien enemies during the war, and that in substance and in fact the respondent company was an alien company; and (2) that the solicitors for the respondent company had no authority to use the writ in the action in view of the fact that the directors, being alien enemies, had no *locus standi* in these courts. Scrutton, J., held that the respondents were entitled to judgment under order 14, as the Court had no power to go behind and inquire into the matters put forward in defence. The company was registered as an English company, and so long as it remained on the register as such it was entitled to sue. He

was also of opinion that this payment was not a trading with the enemy. It was not a payment to the directors, but to the company, and the company were the plaintiffs. This view was upheld by the Court of Appeal, which was specially constituted to decide the question. Of the six judges Lord Justice Buckley alone dissented. The Daimler Co. appealed to the House of Lords.

Lord HALSBURY read a judgment, in the course of which he said that in his opinion the whole discussion was solved by the simple proposition that in our law, when the object to be obtained was unlawful, the indirectness of the means by which it was to be obtained would not get rid of the unlawfulness. The object with which the company was registered in England was to derive profits for its shareholders. Since the outbreak of the war the shareholders, one and all, had become (with one exception) alien enemies, and the dealing with them became illegal. If the decision had turned solely on the authority of the secretary in the circumstances to issue the writ, he should have been disposed to hold that on that ground the appeal must succeed. He moved that the appeal should be allowed, with costs.

Lord ATKINSON agreed that the appeal must be allowed. He thought there was no evidence on which it could be assumed that the company as distinct from its shareholders "resided" here for the purposes of deciding questions in reference to its trading. That was a question which had to be decided for the purpose of the Income Tax Acts, and applying the rules by analogy used for deciding that question for income-tax purposes, it seemed plain to him that the company must be regarded as an alien company, and by the Proclamations the position taken up by the appellants was right, and this appeal must be allowed, for the residence of the respondent company was not in England, but in truth in Germany.

Lord MERSEY said he had prepared a judgment expressing his opinion that the appeal ought to be allowed. Since then he had had an opportunity of reading the judgment prepared by Lord Parker, and it so thoroughly expressed his views that he decided to withdraw his judgment and adopt Lord Parker's instead. He added that Lord Kinnear had also prepared a judgment, but after seeing the judgment of Lord Parker he withdrew his judgment in favour of Lord Parker's judgment.

Lord SHAW then read a short judgment. He said he agreed with the Court of Appeal on the first point, but disagreed with them on the second. He thought that the appeal should be allowed, but without costs, even if an order for costs would be effective. The point against agency and authority to take these particular legal proceedings had been taken, and he did not differ from the view of the House that it was well founded.

Lord PARKER read his judgment, which he stated he had prepared with the assistance and collaboration of Lord Sumner, who authorized him to state that he agreed with it. When the action was instituted all the directors of the plaintiff company were Germans resident in Germany. In other words they were the King's enemies, and as such incapable of exercising any of the powers vested in them as directors of a company incorporated in the United Kingdom. They were incapable, therefore, of authorizing the institution of this action, and the contention that the secretary could authorize such institution was untenable. It followed that this action was instituted without authority from the company, and the Court, having notice of the fact, should have refused relief. The rule against trading with the enemy was a belligerent's weapon of self-protection. It ought to be applied to modern circumstances and not limited to the applications of long ago. Having regard to such considerations he thought the law on the subject might be summarized as follows:—(1) A company incorporated in the United Kingdom was a legal entity, a creation of law with a status and capacity which the law conferred. It was not a natural person with mind or conscience. To use the language of Buckley, L.J., "It can be neither loyal nor disloyal; it can be neither friend nor enemy." (2) Such a company could only act through agents properly authorized, and so long as it was carrying on business in this country through agents so authorized and resident in this or a friendly country, it was *primâ facie* to be regarded as a friend, and all his Majesty's lieges might deal with it as such. (3) Such a company might, however, assume an enemy character. A person knowingly dealing with the company in such a case was trading with the enemy. (4) The character of individual shareholders could not itself affect the character of the company. [He referred to the fact that the share capital was held entirely (except as to one share) by Germans.] The circumstances of the present case were therefore such as to require close investigation, and precluded the propriety of giving leave to sign judgment under order 14. (5) In a similar way a company registered in the United Kingdom, but carrying on business in a neutral country through agents properly authorized and resident here or in the neutral country, was *primâ facie* to be regarded as a friend, but might, through its agents or persons in *de facto* control of its affairs, assume an enemy character. (6) A company registered in the United Kingdom but carrying on business in an enemy country was to be regarded as an enemy. His lordship said he felt some little difficulty as to the precise form which their lordships' order ought to take. The action was altogether irregular, and should be struck out, all orders made therein being, of course, discharged. But there was no one before the House who could be made liable for costs, or who could be ordered to replace in Court the moneys paid out to the secretary. There could, therefore, be no order as to costs, and the appellants must be left to pursue any remedy they might have against the secretary personally in respect of the money which was erroneously paid to him.

Lord PARMOOR read a judgment agreeing with the view expressed by Lord Shaw. The appeal was accordingly allowed. No order as to costs.—COUNSEL, for the appellants, *Gore-Browne*, K.C., and *Maddocks*; for the respondents, *Upjohn*, K.C., and *Douglas Hogg*. SOLICITORS, *Andrew, Wood, Purves, & Sutton*, for *R. A. Rotherham*, Coventry; *Harwood & Co.*

[Reported by ERSKINE REID, Barrister-at-Law.]

# Court of Appeal.

*Re* **SMITH. PRADA *v.* VANDROY.** No. 1. 23rd and 24th June.

WILL—CONSTRUCTION—PROVISION AGAINST LAPSE BY DEATH OF LEGATEE—"THIS MY WILL"—BEQUEST BY CODICIL, AND DEATH OF LEGATEE BEFORE TESTATRIX—"WILL" THE ENTIRE TESTAMENTARY DISPOSITION.

*A testatrix by her will declared that no legacy "given by this my will" should lapse by reason of the death of the legatee before her, but should take effect as if the legatee had died immediately after her, and pass to his legal personal representatives. The testatrix made several codicils to her will, by one of which she revoked legacies given to persons who had since died, and by the seventh and last, bequeathed a leasehold house and its contents to a person who predeceased.*

*Held (affirming* Sargant, J.*), that the words "this my will" meant the whole of the testatrix's testamentary disposition, and therefore that the clause against lapse applied to the gift in the codicil.*

Bonner *v.* Bonner (13 *Ves.* 379) *and* Henwood *v.* Overend (1 *Mer.* 23) *overruled.*

Appeal by the residuary legatee from a decision of Sargant, J. (reported *ante*, p. 386), on an originating summons raising (*inter alia*) the following questions:—(1) Whether a provision in a will against lapse by the death of the legatee in the testatrix's life applied to the death of the residuary legatee; (2) whether the same provision applied to a bequest of a leasehold house and its contents made by a codicil. The testatrix made her will on 6th June, 1894, and after giving a number of pecuniary legacies, directed her executors to sell and convert her estate, and pay thereout her debts, funeral and testamentary expenses and legacies, and gave the residue to Marie Vandroy absolutely. The will further directed that all bequests and legacies given to married women should be for their separate use. The clause against lapse was as follows:—"No legacy given by this my will shall lapse by reason of the death of the legatee before me, but shall take effect as if the death of such legatee had happened immediately after my death, and such legacy shall accordingly pass to the legal personal representative of such deceased legatee." The testatrix lived to the age of ninety-nine years, and died in 1915, having survived many of the legatees under her will and codicils. She made altogether seven codicils to her will, by the seventh of which, made in 1903, she bequeathed a leasehold house to W. H. Hayman. Both Marie Vandroy and W. H. Hayman died in the lifetime of the testatrix. Each codicil contained a clause confirming the will and all previous codicils. Sargant, J., held that the clause against lapse applied both to the residuary gift and the bequest in the codicil, delivering a separate judgment on each point. The residuary legatee appealed on the second point.

THE COURT dismissed the appeal.

Lord COZENS-HARDY, M.R., in giving judgment, said he certainly did not mean to lay down any general rule of construction, and say that the *primâ facie* meaning of the phrase "this my will" indicated the will itself only. He preferred to approach and examine all the testamentary instruments admitted to probate, and ascertain their meaning, taken together. "This my will" might readily mean either one of two different things, and the question was in which of those two senses the phrase was used. Turning to the will it would be seen that it contained a direction to sell and convert into money the testatrix's estate and to pay legacies. In a case where, as here, the testatrix made a number of subsequent codicils, was it not quite clear that the legacies bequeathed by those codicils must be paid under the trust contained in the will: *Jauncey* v. *Attorney-General* (3 Giff. 308)? That being so, the next clause was a declaration that all bequests and legacies given to married women should be for their separate use, and might be paid to them upon their receipt alone. That must apply equally to any legacy, whether given by the will or any codicil. [His lordship then read the declaration against lapse, and proceeded:] Was not that a perfectly general clause, just as general as the previous clauses had been? The appointment of executors was of "executors of this my will." There was no necessity to refer to the various codicils until the sixth was reached, by which a legacy given to William Walsh, "since deceased," by the third codicil was revoked. The testatrix need not have revoked this unless she had thought that the clause against lapse applied. Then came the gift to W. H. Hayman in the seventh codicil. There was sufficient, in his lordship's opinion, in the context of the will and the other testamentary documents, all taken together, to show that that bequest was controlled by the direction contained in the will, and passed to Hayman's legal personal representative. Without going through all the authorities, his lordship did not consider that *Henwood* v. *Overend* (1 Mer. 23) and *Bonner* v. *Bonner* (13 Ves. 279) were satisfactory cases to follow. The appeal therefore would be dismissed.

PICKFORD and WARRINGTON, L.JJ., concurred.—COUNSEL, *Maugham*, K.C., and *Warwick Draper; Tomlin*, K.C., and *Darlington; Percy Wheeler*. SOLICITORS, *Hutchinson & Cuff; Kingsford, Dorman, & Co.*, for *J. J. Williamson*, Deal; *Walter Maskell & Co.*

[Reported by H. LANGFORD LEWIS, Barrister-at-Law.]

# Probate, Divorce, and Admiralty Division.

*In the Goods of* **ADA STANLEY (Deceased).** Bargrave Deane, J. 20th March; 15th May; 3rd July.

PROBATE—SOLDIER'S WILL—INFORMAL WILL OF ARMY NURSE WRITTEN IN ENGLAND WHILE UNDER ORDERS TO EMBARK FOR DUTY—"ACTUAL MILITARY SERVICE"—WILLS ACT, 1837 (1 VICT. C. 26), S. 11.

*The provision of the Wills Act, 1837 (1 Vict. c. 26), s. 11, relating to "any soldier being in actual military service" is not restricted to persons of the male sex. An army nurse is a "soldier" within the meaning of the section, and her informal will, if written by her while "in actual military service," is entitled to probate as a soldier's will.*

*An army nurse, who had been employed on hospital ships plying between England and the Near East, while in London on short leave, received orders to embark on a hospital ship. Three days after the receipt of such orders, and two days before embarking, she wrote out in London a letter containing her testamentary dispositions.*

*Held, that the letter was entitled to probate as the will of a "soldier being in actual military service."*

This was a motion for probate of a letter dated 8th October, 1915, containing the testamentary dispositions of Ada Stanley, an army nurse, who died at Netley Hospital on 23rd December, 1915, as the will of a "soldier being in actual military service" within section 11 of the Wills Act, 1837. Before the war the deceased was enrolled as a member of the Territorial Force Nursing Service, and in January, 1915, she was mobilized for duty at the 3rd Northern General Hospital, Sheffield. On 18th July, 1915, she entered into the following agreement with His Majesty's Principal Secretary of State for War: "I, Ada Stanley, of 3rd Northern General Hospital, Sheffield, hereby offer and agree if accepted by you to serve at home or abroad as a nurse to His Majesty's forces: (1) The period of my service hereunder shall commence as from the day on which I shall commence duty, and shall continue until the expiration of twelve calendar months thereafter, or until my services are no longer required, whichever shall first happen. (2) My pay and allowances shall be at the same rates as those paid to members of Queen Alexandra's Imperial Military Nursing Service. (3) In addition to such pay I shall receive a free passage to any country abroad to which I may be sent, and (subject as hereinafter appears) a similar free passage back to England. (4) I shall receive free rations while in the field. (5) During the said period I will devote my whole time and professional skill to my service hereunder, and will obey all orders given to me by superior officers. (6) In case I shall have completed my service hereunder to your satisfaction in all respects, I shall receive at the end of the said period a gratuity at the rate laid down in Article 682, Royal Warrant for Pay, but in case I shall in any manner misconduct myself or shall be (otherwise than through illness or unavoidable accident) unfit in any respect for service hereunder, of which misconduct or unfitness you or your authorized representative shall be sole judge, you shall be at liberty from and immediately after such misconduct or unfitness to discharge me from futher service hereunder, and thereupon all pay, allowances and gratuity hereunder shall cease." In July, 1915, she was ordered on active service abroad, and was employed on board His Majesty's hospital ships proceeding to and from the Near East. She was employed on His Majesty's hospital ship *Northland*, which arrived at Devonport from the Mediterranean on 1st October, 1915. From that date she was on short leave "pending further instructions." On 8th October, 1915, the deceased, who was staying in London, wrote and sent to her niece, Ada Louise Stanley, the following letter:—"Hotel York, London. 8th October, 1915.—My dear Ada,—I give you full liberty to deal with my affairs. Give Miss Horrocks £10 and anything of mine she cares to have for a keepsake; £250 that is invested with Mr. Clark and my post-office money for yourself, *minus* the £10 for Miss H., and £5 each for Dorothy and Nellie and Kathleen, and Mr. Clark whatever you care to give him as a little remembrance from me, and Mrs. Clark something of my personal belongings, also Mrs. Whittaker, my housekeeper. £50 invested in Mill for Mary Iredale. You will find the address, &c., in my box. My insurance money for my sister Emma Fairbairn, to be used just for her own personal comfort, not otherwise. Policy in my trunk, Kershaw-street. Divide as you think my belongings, but please make no fuss. With love, yours, Ada. P.S.—I have no bills to pay." The deceased again left England for the Mediterranean on 10th October, 1915, on h.p. *Egypt*. She returned to England on the hospital ship *Mauretania*, arriving in England on 14th December, 1915. On this last voyage she contracted dysentery, and on arrival at port was taken to the Royal Victoria Hospital, Netley, where she died on 23rd December, 1915. The deceased's estate consisted of personalty of the value of about £550. Her next-of-kin were ten brothers and sisters, who, with two children of a deceased brother, were the only persons interested in her estate in the event of an intestacy. All were of full age, and consented to the question of the admissibility to probate of the letter dated 8th October, 1915, being determined on motion. Counsel for the applicant, Ada Louise Stanley, moved for a grant to her of probate of the letter dated 8th October, 1915, as executrix according to the tenor. Section 11 of the Wills Act, 1837 (1 Vict. c. 26), provided "that any soldier being in actual military service, or any mariner or seaman being at sea, may dispose of his personal estate as he might have done before the making of this Act." He submitted that its provisions were not confined to persons of the male sex. An army nurse came within the description of a "soldier being in actual military service." [BARGRAVE DEANE, J.—The object of the section was to assist a person who was unable to obtain legal advice—a person who was *inops consilii*. This letter was written in London, while the lady was on leave. Why could she not make her will in the proper way? I do not believe that the section was intended to apply to persons who had plenty of opportunity to get legal advice.] Counsel for the applicant, continuing, submitted that a nurse in the employment of the War Department formed part of the unit of the army to which she was attached, and was as much a "soldier" as a surgeon in the military service of the East India Company who had been held to be within the section (*In the Goods of Donaldson*, 2 Curteis, 386). The Irish Courts had recently held in *In the Goods of Hale* (1915, 2 Ir. R. 362) that a woman typewriter employed by the owners of ss. *Lusitania* was within the section, and was a "mariner or seaman." [BARGRAVE DEANE, J.—I have no difficulty about this lady's having been a "soldier"; the only difficulty I feel is whether she was "in actual military service" at the time she wrote the letter.] In *In the Goods of Hiscock* (1901, P. 78) and in *Gattward* v. *Knee* (1902, P. 99), Sir F. H. Jeune had held that every soldier who had been mobilized must be regarded as being "in actual military service." [BARGRAVE DEANE, J.—Those cases went further than I should have been inclined to go; they would extend the provisions of the section to every soldier on Salisbury Plain.] Counsel for the next-of-kin submitted that the Court was not bound to follow the decisions in *In the Goods of Hiscock* (*supra*) and *Gattward* v. *Knee* (*supra*). The deceased was not *in expeditione* when she wrote the letter; her *expeditio* ended on 1st October, and was not resumed until 10th October, when her leave terminated; she was not *inops consilii* between those dates. He referred to *Herbert* v. *Herbert* (Dea. & Sw. 10). Counsel for the applicant, in reply, submitted that the service had not come to an end on 1st October. The deceased had covenanted for a year's service, and that year was still uncompleted. She had discontinued her duties for a few days, and was waiting to be sent to a fresh ship. [BARGRAVE DEANE, J.—There are several million men in England under military law. Are they all within this section? Think of the prospect it opens up; I am afraid of it. If I make this order it will be a precedent. Unless this lady was under orders to go to sea again, I am not sure that she was "in actual military service." Can you find out from the War Office when she got her orders for 10th October? If when she wrote the letter she knew that she was under orders to join her ship on 10th October, that might make all the difference.] The further hearing was adjourned for inquiry on this point.

3rd July.—Counsel for the applicant read letters from the War Office which shewed that on 5th October, 1915, the War Office despatched to the deceased by post orders to embark on ss. *Aquitania* on Saturday, 9th October, 1915. The letter of which probate was claimed was written on 8th October. The deceased left London for Southampton at 7 a.m. on 9th October, but, owing to the tides, the captain of ss. *Aquitania* found it necessary to leave earlier than was expected, and the deceased found on arrival at Southampton that the ship had sailed. She, with other nurses, reported herself to the embarkation commandant at Southampton, and on the same day orders by telegraph were sent by the War Office to the embarkation commandant to embark the deceased on h.p. *Egypt*. The deceased embarked on that vessel on 10th October. [BARGRAVE DEANE, J.—As the lady was under orders to sail when she wrote the letter of 8th October, and did in fact sail on 10th October, I think that covers the ground, and I am prepared to hold that she was within section 11 of the Wills Act. The Act of Parliament speaks of "soldiers" and "mariners or seamen"; I am not quite sure in which category the deceased should be regarded.] Counsel for the next-of-kin submitted that there was a difficulty in regarding the deceased as a sailor; she was under contract with the War Office, and was not "at sea" when the letter was written.

BARGRAVE DEANE, J.—I do not think that it very much matters. The deceased was appointed by the War Office to serve at sea. I will treat her as a "soldier in actual military service." There will be a grant of probate of the letter of 8th October, 1915, to the applicant, Ada Louise Stanley, as executrix according to the tenor. The costs of all parties as between solicitors and clients will be paid out of the estate. Order accordingly.—COUNSEL, *W. O. Willis*, for the applicant; *J. Harvey Murphy*, for the next-of-kin. SOLICITORS, *H. G. Campion & Co.*, for *Clegg & Sons*, Sheffield; *Neave, Morton, & Co.*, for *T. Smailes*, Huddersfield.

[Reported by CLIFFORD MORTIMER, Barrister-at-Law.]

# CASES OF LAST SITTINGS.

## High Court—Chancery Division.

*Re* **WELLS AND HOPKINSON'S CONTRACT.** Astbury, J. 7th June.

TRUSTEE—DELEGATION—EXECUTION OF TRUSTS (WAR FACILITIES) ACT, 1914 (5 GEO. 5, C. 13), S. 1—EXECUTION OF TRUSTS (WAR FACILITIES) AMENDMENT ACT, 1915 (5 & 6 GEO. 5, C. 70), SS. 1 AND 2.

*A trustee cannot delegate the execution of the trust to his co-trustee under the Execution of Trusts (War Facilities) Act, 1914, he not being "a person capable of being appointed a trustee of the trust," as he is already a trustee and therefore incapable of being appointed to an office that he already holds.*

This was a vendor and purchaser summons taken out by the purchaser for a declaration that a good title had not been shewn. Section 1 of the Execution of Trusts (War Facilities) Act, 1914, provides that a trustee, whether a sole trustee or a trustee with others, may, notwithstanding any rule of law or equity to the contrary, by power of attorney delegate to "any person capable of being appointed to be a trustee of the trust" the execution of the trust during any period for which the trustee is engaged on war service and a month after. By section 1 of the Execution of Trusts (War Facilities) Amendment Act, 1915, it is provided that a life-tenant, or a person having the powers of a life-tenant within the meaning of the Settled Land Acts, shall be deemed to be a trustee within the principal Act, and may delegate his statutory powers provided that such delegation shall only be made to the Settled Land Act trustees, "or to one or more of them." Section 2 of that Act declares that an executor or administrator of a deceased person is, in relation to the administration of the deceased's estate, a trustee within the meaning of the principal Act, and that he may appoint as his attorney his co-executor or co-administrator or other persons therein mentioned. Two trustees of a will held a leasehold house upon the trusts of the will, which included a power of sale. On 13th July, 1915, one of them filed in the Central Office a power of attorney, purporting to be made under the Act of 1914, appointing his co-trustee his attorney to execute the trusts of the will during his period of service with His Majesty's forces and for one month after, with power to sell or otherwise dispose of the estates vested in them, and do all acts and things necessary in that behalf. Pursuant to this power the co-trustee purported to sell, and the assignment purported to be made by both trustees and was executed by one on his own behalf and as attorney for his co-trustee under the above power. Then there was another sale and a contract and deposit paid, and this new purchaser took the objection that the delegation of the execution of the trusts to the co-trustee was not authorized by the statute.

ASTBURY, J., after stating the facts, said: I hold that section 1 of the principal Act does not enable a trustee to delegate a trust to the co-trustee. In other words, the phrase "Any person capable of being appointed to be a trustee of the trust," does not apply to a person already a trustee, and therefore incapable of being appointed to an office that he already holds. The purchaser has pointed out that this might have been the direct intention of the Legislature, as the statute was only dealing with the machinery of the execution of the trust, and not with the policy of the law as to not reducing the number of trustees. A single trustee may delegate his powers, but I do not think one of two trustees can delegate to his co-trustee, and thereby reduce the number of trustees to one. The vendor suggests that section 1 of the amending Act shews that, if a tenant for life is an infant, the trustees of the settlement, in exercising his powers under section 60 of the Settled Land Act, 1882, could delegate to one of themselves. I do not think that is the effect of the amending Act, but whether it is so or not, it throws no light on section 1 of the principal Act. The vendor also relies on section 2 of the amending Act, which not only declares that an executor is a trustee, but also declares that he may delegate to his co-executor. But if this section throws any light at all on the principal Act it is in favour of the purchaser's contention. The section declares that an executor is a trustee within the meaning of the principal Act. If the principal Act has enabled a trustee to delegate to his co-trustee, that declaration alone would have enabled an executor to delegate to his co-executor, and there would have been no necessity to make a special declaration in that behalf. The vendor has not shewn a good title, and must return the deposit.—COUNSEL, *W. R. Sheldon; P. B. Lambert.* SOLICITORS, *Torr & Co.; Petch & Co.*

[Reported by L. M. MAY, Barrister-at-Law.]

**BISSONS v. CHICHESTER-CONSTABLE.** Younger J. 24th, 25th, and 28th February; 1st March; 17th April.

WILL — CONSTRUCTION — COPYHOLDS — EXECUTORS — APPOINTMENT OF — DIRECTION TO PAY DEBTS—GENERAL DEVISE—BEQUEST TO NAMED PERSONS—DIRECTION TO SELL AND DIVIDE—IMPLIED POWER IN EXECUTORS TO SELL.

*Where a testator appointed executors and directed them to pay his debts, and gave and bequeathed all his real and personal estate, which included copyholds, to seven named persons, and directed that everything should be sold, without saying by whom, and divided among these seven persons,*

*Held, that the devise in terms to the seven beneficiaries did not prevent the Court from placing upon the will the construction that the persons to sell are the executors.*

Patton *v.* Randall (1820, 1 *J. & W.* 189) *is not an authority for the general proposition that where lands are devised direct to several in fee, with a direction superadded that they shall be sold, there is no implied power of sale in the executors.*

*On the construction of this will the executors have by necessary implication a legal estate in the copyholds to enable them to discharge the duties of the will imposed upon them by virtue of the charge of debts upon the copyholds, and accordingly to sell.*

Re Davies to Jones (1883, 24 *Ch. D.* 190) *applied.*

*The purchaser is entitled to be admitted direct without any previous admittance of the executors or the beneficiaries or any other person.*

Holder *v.* Preston (1769, 2 *Wils.* 400) *applied.*

This was a special case stated by the parties, the question for the Court being whether the executors of a certain will had, by virtue of the will, a power of sale over certain copyhold hereditaments, and could, by virtue of such power, bargain and sell or otherwise assure the hereditaments to a purchaser so as to entitle her to be admitted thereto without the previous admittance of the executors or of the beneficiaries or of any other person. The facts were as follows: By his will the testator appointed executors and directed them to pay his debts. He gave and bequeathed all his real and personal estate, which included certain copyhold hereditaments, to seven named persons, and directed that everything should be sold and divided among the seven persons without saying who was to sell. The executors thereupon contracted to sell to a purchaser the copyholds, but the lord of the manor objected to the proposed conveyance by them by way of bargain and sale on the ground that the executors had no power of sale under the will. The executors and the purchaser accordingly brought this action against the lord of the manor and his steward for a declaration that the purchaser was entitled to be admitted upon a deed of bargain and sale by the executors, and for an order directing the lord and his steward to admit the purchaser as tenant on the court rolls of the manor.

YOUNGER, J., in a considered judgment, said: Taking the whole will together, I feel little doubt as a matter of construction that it is the executors who are to pay the debts and the expenses. It is they who are to divide the proceeds of sale, and it is quite clear on the will that those who have to divide are the persons who were directed to sell. But the question remains whether the devise in terms to the seven beneficiaries prevents the Court from placing upon the will a construction in the above sense which would otherwise be permissible. Counsel for the defendants contended that the devise had that effect, and cited in support of his argument the following passage from Farwell on Powers, 2nd ed., p. 72: "If the lands are devised direct to several in fee, with a direction superadded that they should be sold, there is no implied power of sale in the executors, although the devisees are minors. The evidence of a contrary intention is too strong"; for which statement *Patton* v. *Randall* (1820, 1 J. & W. 189, 196) was cited. But if that case is referred to, and the will there in question is examined, it will be found that it is not a decision on which so general a statement can be based, and that the will there construed is very special, and both it, and the property dealt with by it, are entirely different from those with which the Court has here to deal. A case much nearer the present than *Patton* v. *Randall* (*supra*), although it also related to freehold land, is *Re Davies to Jones* (*supra*), where on the whole will Pearson, J., held that the executors had by necessary implication a legal estate in the land to enable them to discharge the duties by the will imposed upon them. In my judgment there is no such general rule to be implied under all circumstances from a devise of property to others as that for which counsel for the defendants has contended, and I do not think that any such general rule is intended to be laid down in the passage cited from Farwell on Powers. On the whole I agree with the contention of counsel for the plaintiffs that the executors here had a power of sale by virtue of the charge of debts upon the copyhold estate which resulted from the testator's direction that the debts should be paid. And if so, then I agree with him in his further contention that they are the persons to sell by virtue of the direction that everything should be sold, addressed, as I think, on construction to them. Such a direction does not, in order to be effective, either involve or require any estate in the executors, so that on either view they can sell to a purchaser who is entitled to be admitted direct without any previous admittance on the part of anyone: see Scriven on Copyholds, 7th ed., p. 195; *Holder* v. *Preston* (1769, 2 Wils. 400); *Reg.* v. *Wilson* (1862, 3 B. & S. 201). The question in the special case should therefore be answered in the affirmative.—COUNSEL, *H. J. H. Mackay; L. F. Potts.* SOLICITORS, *Bell, Brodrick, & Gray*, for *Winter & Son*, Hull; *Collyer-Bristow, Curtis, Booth, Birks, & Langley*, for *Stamp, Jackson, & Birks*, Hull.

[Reported by L. M. MAY, Barrister-at-Law.]

# King's Bench Division.

**LOUGHER AND OTHERS v. MOLYNEUX.** Low, J. 8th February.

FRIENDLY SOCIETY—LOAN TO MEMBER—MAXIMUM EXCEEDED—STATUTORY PROHIBITION—ILLEGALITY—FRIENDLY SOCIETIES ACT, 1896 (59 & 60 VICT. c. 25), ss. 46, 84, 89.

*Section 46 of the Friendly Societies Act, 1896, provides that "a society shall not make any loan to a member on personal security beyond the amount fixed by the rules"; and section 84 provides that it shall be an offence to do anything forbidden by the Act. Consequently a loan in excess of the amount fixed by the rules is an illegal transaction, and the money cannot be recovered.*

Action tried by Low, J., without a jury. The plaintiffs, the trustees of a registered friendly society, sued the defendant for the sum of £130, being the balance due upon a joint and several promissory note for £200, of which the defendant was one of the makers. The society had lent a sum of £200 to one of the members of the society, and the note was given by him to secure the repayment, the defendant and another joining as sureties. As further security for the repayment of the loan the member had deposited a policy of insurance on his life. The rules of the society provided that a loan to a member on personal security should not exceed £50. Section 44 of the Friendly Societies Act, 1896 (59 & 60 Vict. c. 25), provides that the trustees of a registered society may invest the funds of the society to any amount

in various specified securities, and "upon any other security expressly directed by the rules of the society, not being personal security, except as in this Act authorized with respect to loans." Section 46 provides that a society may, out of any separate loan fund, "make loans to members on their personal security," provided that no loan exceeds the amount fixed by the rules. Section 84 provides that "it shall be an offence under this Act if . . . a registered society . . . does anything forbidden by this Act," and section 89 imposes a fine of £5 for such an offence. It was contended by the defendant that the plaintiffs could not recover the amount claimed, as the loan, being in excess of the amount allowed by the rules, the transaction was contrary to the provisions of the Act, and consequently illegal. For the plaintiffs it was contended that the transaction was not a loan upon personal security only, as it was secured by the deposit of the policy of insurance: it ought therefore to be treated as an investment; and that even if it was a loan, the transaction was merely unauthorized, and not illegal, so as to prevent the plaintiffs recovering the amount from the surety.

Low, J., in giving judgment for the defendant, said: There could be no doubt that the transaction came under the rule which dealt with loans to members, and not under the rule dealing with investment of surplus funds, and that it was a loan far exceeding the statutory limit of £50. It was contended for the defendant that, as the society had lent more than £50 to a member, it had committed an offence under the statute, and that therefore the loan was irrecoverable. The authorities cited in support of that contention covered much ground. In *Fergusson* v. *Norman* (5 Bing. N. C. 76), it was held that a pawnbroker who did not comply with the provisions of the statute (39 & 40 Geo. 3, c. 99, s. 6) acquired no property in the article pledged, and could not retain it; in *Bensley* v. *Bignold* (5 B. & Ald. 335) it was decided that a printer could not recover the cost of printing any work if he had not affixed his name to it pursuant to the statute (39 Geo. 3, c. 79, s. 27); and in *Cope* v. *Rowlands* (2 M. & W. 149) it was held that an unlicensed stockbroker was not entitled to recover his commission or any reward for his work and labour. In the more recent cases of *Victorian Daylesford Syndicate* v. *Dott* (1905, 2 Ch. 624) and *Bonnard* v. *Dott* (1906, 1 Ch. 740), which arose under the Money-Lenders Act, 1900, it was decided that a money-lender who had not complied with the regulations of the Act as to registration could not recover money which he had lent, nor retain securities given for the loan, because the transaction was illegal and void; and Buckley, J., in the earlier case, said at p. 629: "The next question is whether the Act is so expressed that the contract is prohibited so as to be rendered illegal. There is no question that a contract which is prohibited, whether expressly or by implication, by a statute is illegal and cannot be enforced. I have to see whether the contract is in this case prohibited expressly or by implication," and he decided that in that case the contract could not be enforced. Applying those doctrines to the present case, and giving the best consideration he could to the authorities cited, his lordship said that he was unable to see anything in the transaction to take it out of the operation of the principles established by the authorities to which he had referred. In the present case the lending of more than £50 to a member was expressly prohibited. The prohibition was clear and express, and though perhaps it was strengthened by the addition of a penalty, he could not see how, even if there was no penalty, the plaintiffs could, in the face of the authorities, recover money lent in direct contravention of the statutory prohibition. In *Re Coltman* (19 Ch. D. 64), which was the only authority that could be relied upon by the plaintiffs, the transaction was within section 16 of the Friendly Societies Act, 1875, which corresponded with section 44 of the Act of 1896. That was a merely enabling section containing nothing in the nature of a prohibition. If the present transaction had been within section 44 no difficulty would have arisen; but it was within section 46, and that case, therefore, did not apply. Judgment for defendant.—COUNSEL, *Lincoln Reed*, for the plaintiffs; *Rayner Goddard*, for the defendant. SOLICITORS, for the plaintiffs, *Rawson & Stevens*, for *W. H. Davies*, Cardiff; for the defendant, *J. T. Lewis & Woods*, for *William Thomas*, Cardiff.

[Reported by L. H. BARNES, Barrister-at-Law.]

# New Orders, &c.

## War Orders and Proclamations.

The *London Gazette* of 30th June contains the following:—

1. A Proclamation, dated 27th June (printed below), making additions to the absolute contraband list.

2. An Order in Council, dated 27th June (printed below), making amendments in the Defence of the Realm (Consolidation) Regulations, 1914.

3. An Order in Council, dated 27th June (printed below), making amendments in the Aliens Restriction (Consolidation) Order, 1916.

4. An Order in Council, dated 28th June, further amending the Proclamation of 10th May, 1916 (*ante*, p. 482), prohibiting the exportation from the United Kingdom of certain articles to certain or all destinations.



5. An Order in Council, dated 30th June, making alterations in the "Statutory List" under the Trading with the Enemy (Extension of Powers) Act, 1915 (see *ante*, p. 541). Additions are now made as follows:—Argentina (4), Bolivia (1), Brazil (3), Chile (1), Denmark (6), Ecuador (1), Morocco (88, this supersedes the previous lists for Morocco), Netherlands (13), Norway (15), Persia (1), Peru (4), Philippine Islands (23), Portugal (1), Portuguese West Africa, &c. (12), Spain (7), Sweden (3), Uruguay (2). Removals:—Argentina (4), Brazil (1), Chile (1), Netherlands (4), Norway (1), Portugal (2), Sweden (1). Variations in names:—Brazil (1), Netherlands (2), Norway (6), Portugal (4).

"The Foreign Trade Department is prepared on application to inquire of His Majesty's Representatives abroad for the names of substitutes for any firm on the Statutory List. When the applicant wishes this done by telegraph he must undertake to pay the cost of the telegraphic correspondence. A considerable amount of information is, however, already available at the Foreign Trade Department, and it is hoped that it may be possible in many cases to suggest the names of satisfactory substitutes in response to inquiries, without the necessity of referring the matter abroad. It would greatly facilitate the work of this Department if applicants in making inquiries would specify the particular trade, or trades, for which substitutes are required."

6. An additional notification (see *ante*, p. 49) from the Italian Government, stating the conditions under which the admission into private warehouses of goods disembarked from German ships requisitioned by them will be allowed.

7. A Foreign Office Notice, dated 26th June, making additions to the list of persons and bodies of persons to whom articles to be exported to Liberia may be consigned.

8. A Notice of the appointment of additional members of Appeal Tribunals under the Military Service Act, 1916, as follows:—County of London (2), County of Montgomery (1).

9. A Notice that Orders have been made by the Board of Trade under the Trading with the Enemy Amendment Act, 1916, requiring three more businesses to be wound up, and prohibiting another from trading after 29th September, 1916. This brings the total to 214.

10. An Order made under the Defence of the Realm Regulations Consolidated as to the Devonport and Plymouth Pilotage Districts.

11. An Army Council Order, dated 30th June, directing as follows:—"All hay or oat or wheat straw of the 1916 crop in England, Wales and Ireland, now standing in bulk or as when harvested, is taken possession of by the Army Council and shall from the date of this Order, or as and when harvested, be held at the disposal of the duly authorized officers of the War Department.

"This Order is without prejudice to the Order of the Army Council of 31st March, 1916, relating to the prohibition of the lifting of Hay and Straw in Great Britain which still remains in force as regards Great Britain in respect of all hay or oat or wheat straw other than the 1915 crop." The Order contains regulations as to release for sale to private consumers.

The *London Gazette* of 4th July contains the following:—

12. An Order in Council, dated 4th July, further amending the Proclamation of 10th May, 1916 (*ante*, p. 482), prohibiting the exportation from the United Kingdom of certain articles to certain or all destinations.

13. A Foreign Office Notice, dated 4th July, making additions or corrections to the lists published as a supplement to the *London Gazette* of 16th May, 1916, of persons to whom articles to be exported to China and Siam may be consigned.

14. A Notice that Orders have been made by the Board of Trade under the Trading with the Enemy Amendment Act, 1915, requiring three more businesses to be wound up, bringing the total to 217.

15. A General Order, dated 3rd July (printed below), of the Central Control Board (Liquor Traffic), with reference to the sale of light beer.

16. An Order of the Ministers of Munitions, dated 4th July (printed below), as to the insurance of war material.

17. An Order to be substituted for that which appeared in the *Gazette* of 30th June, 1916 (*supra*), made under the Defence of the Realm Regulations Consolidated as to the Devonport and Plymouth Pilotage Districts.

18. An Admiralty Notice to Mariners, dated 1st July (No. 703 of the year 1916), relating to England, South-East Coast (Dover Strait—Light Vessels Established; Traffic Regulations). The former Notices, Nos. 556 and 583 of 1916, are cancelled. The present Notice is a re-publication of Notice No. 583 of 1916, with amendments as to the position of the Light-Vessels.

19. An Admiralty Notice to Mariners, dated 1st July (No. 707 of the year 1916), relating to England, East Coast (River Humber Approach—Prohibited Area). The former Notice, No. 679 of 1916, is cancelled. The present Notice, which is issued under the provisions of the Defence of the Realm (Consolidation) Regulations, 1914, republishes No. 679 with additional information.

20. An Order in Council, dated 4th July, restoring tobacco as an article which, if exported to the Netherlands, must be consigned to the Netherlands Oversea Trust (see 59 SOL. JOURN. p. 600).

## Contraband.

### A PROCLAMATION

MAKING CERTAIN ADDITIONS TO THE LIST OF ARTICLES TO BE TREATED AS CONTRABAND OF WAR.

*GEORGE* R.I.

Whereas on the 14th day of October, 1915, We did issue Our Royal

Proclamation specifying the articles which it was Our intention to treat as contraband during the continuance of hostilities, or until We did give further public notice; and

Whereas on the 27th day of January, 1916, and the 12th day of April, 1916, We did by Our Royal Proclamations of those dates make certain additions to and modifications in the said list of articles to be treated as contraband; and

Whereas it is expedient to make certain further additions to the said list:

Now, therefore, We do hereby declare, by and with the advice of Our Privy Council, that during the continuance of the war or until We do give further public notice, the following articles will be treated as absolute contraband in addition to those set out in Our Royal Proclamations aforementioned:—

Electric appliances adapted for use in war and their component parts.
Asphalt, bitumen, pitch, and tar.
Sensitized photographic films, plates, and paper.
Felspar.
Goldbeaters' skin.
Talc.
Bamboo.

27th June.

## Defence of the Realm Regulations.

### ORDER IN COUNCIL.

[Recitals.]

It is hereby ordered that the following amendments be made in the Defence of the Realm (Consolidation) Regulations, 1914:—

1. After Regulation 2c the following Regulation shall be inserted:—

"2D. It shall be lawful for the Admiralty or Army Council or the Minister of Munitions, or any person authorized by them to act in their behalf, after consultation with the Board of Trade, to give directions as to the priority to be given in the execution of orders or contracts for the supply of coal or coke, with a view to securing precedence for orders or contracts in accordance with their national importance, and the owner, agent or manager of any mine or any other person affected by the directions who fails to comply with any directions so given, and any person who in any certificate or document given or issued for the purpose of securing priority for any order or contract in pursuance of such directions makes any false statement or false representation, shall be guilty of an offence against these Regulations."

2. In Regulation 19 after the words "without the permission of the competent naval or military authority" there shall be inserted the words "or the Minister of Munitions."

3. After paragraph (*g*) of Regulation 45 the following paragraph shall be inserted:—

"or (*h*) makes any statement or does any act intended or calculated to mislead or deceive any person in the employment of or acting for or on behalf of His Majesty or any Government Department, or the Government of any of His Majesty's Dominions or the Government of any Allied State as to the quantity or quality of any war material or other goods, or otherwise in relation to the manufacture, testing or supply thereof, or with the like intent withholds any information in his possession."

4. In Regulation 55 after the words "as may be fixed by the competent naval or military authority" the following proviso shall be inserted:—

"Provided that a person so taken into custody as having committed a summary offence against these regulations may be released on bail in manner aforesaid without application to or direction from the competent naval or military authority."

5. In subsection (5) of Regulation 56, for the words "may be tried by a court of summary jurisdiction and not otherwise" there shall be substituted the words "may, if he is not subject to the Naval Discipline Act or to military law, be tried by a court of summary jurisdiction and not otherwise, and, if he is so subject, may be so tried or may be dealt with as for an offence against the Naval Discipline Act or military law, as the competent naval or military authority may decide."

6. In Regulation 58D, after the words "while he was subject to military law shall," there shall be inserted the words "unless the competent military authority otherwise directs and."

27th June.

## Aliens Restriction Order.

### ORDER IN COUNCIL.

[Recitals.]

It is hereby ordered as follows:—

1. At the end of Article 18c of the principal Order [*i.e.*, the Aliens Restriction (Consolidation) Order, 1916] the following paragraph shall be added:—

"Any person who purports to attest the particulars in an identity book when any of the relevant particulars in the book have not been filled in and signed shall be deemed to have made a false representation in attesting the particulars in an identity book."

2. The following subsection shall be added at the end of Article 20A of the principal Order:—

"(6) The fact that the rooms or any of the rooms in a house are let unfurnished shall not prevent the house from being deemed to be a lodging-house for the purposes of this Article."

3. In subsection (2) of Article 22A of the principal Order the words "such date or dates as may be fixed by order of a Secretary of State" shall be substituted for the words "the first day of July, nineteen hundred and sixteen," and the words "Article 18s of" shall be omitted.

4. At the end of Article 33 of the principal Order the following subsection shall be inserted:—

"(2) Nothing in this Order imposing restrictions or disabilities on aliens shall be construed as imposing any such restriction or disability on an alien friend who for the time being is serving as a member of His Majesty's military forces (including an alien friend who whilst serving as a member of those forces is on leave in the United Kingdom):

Provided that the relief conferred by this provision shall not extend to members of the army who are for the time being transferred to the reserve, or to members of His Majesty's volunteer forces."

27th June.

## Defence of the Realm (Liquor Control).

### GENERAL ORDER OF THE CENTRAL CONTROL BOARD (LIQUOR TRAFFIC) WITH REFERENCE TO THE SALE OF LIGHT BEER.

We, the Central Control Board (Liquor Traffic), in pursuance of the powers conferred upon us by the Acts and Regulations relating to the Defence of the Realm, hereby make the following Order:—

*Areas to which the Order applies.*

1. This Order shall apply to all areas or parts of areas situate in England or Wales in which an Order of the Board is now in force.

*Extension of Hours for the Sale of Light Beer.*

2. (*a*) Notwithstanding anything contained in Article 2 of the respective Orders of the Board for the aforesaid areas, it shall be lawful, subject as hereinafter provided, to sell or supply in licensed premises or clubs for consumption on and off the premises and to consume therein and to dispatch and take therefrom any beer which on analysis of a sample thereof at any time is found to contain not more than two per cent. of proof spirit on and during the following days and hours:—

*On Weekdays*—

In addition to the hours prescribed by the said Article in each of the said Orders for the sale of intoxicating liquor for consumption on and off the premises respectively, during all hours between 9 o'clock in the morning and 6 or 6.30 in the evening as the case may be.

And the said Article in each of the said Orders shall be read as if such additional hours for the sale and supply of such beer were expressly inserted therein.

(*b*) Not less than seven days' previous notice in writing of the date on which it is intended to begin to sell or supply such beer during such additional hours shall be given by the holder of the licence or the secretary of the club to the Superintendent of the Police of the district wherein the licensed premises or club are or is situate; and all licensed premises and clubs in respect of which such notice has been given shall as from such date, notwithstanding any provisions contained in the said respective orders, be closed on weekdays for all purposes at the hour in the evening at which the sale of intoxicating liquor must cease in accordance with the provisions of the said Article in each of the said Orders, unless and until such sale is discontinued and due notification of such discontinuance has been given to the said Superintendent of Police.

(*c*) A copy of this Order shall be kept permanently affixed in all licensed premises or clubs where such beer is sold during such additional hours.

*Other Provisions of the Orders to Remain in Force.*

3. Save as hereby provided the provisions of each of the said Orders shall apply to the sale and supply of such beer.

*Commencement of Order.*

4. This Order shall come into force on the tenth day of July, 1916.

Given under the Seal of the Central Control Board (Liquor Traffic) this third day of July, 1916.

D'ABERNON, Chairman.
JOHN PEDDER, Member of the Board.

## Insurance of War Material.

*Ministry of Munitions,*
*4th July*, 1916.

ORDER.

Whereas by Orders published in the *London Gazette* on November 23rd, 1915, December 7th, 1915, December 31st, 1915, March 21st, 1916, June 6th, 1916, and June 27th, 1916, respectively, the Minister of Munitions, in pursuance of the powers conferred on him by Regulation 30A of the Defence of the Realm (Consolidation) Regulations, 1914, applied such regulation to certain War Material specified in such Orders, namely:—Optical munitions, all kinds of aluminium and alumina, platinum metal and ores, residues and bars containing the same, and whale oil other than sperm oil.

And whereas the Minister deems it desirable that the insurance of such War Material should be permitted.

Now, therefore, the Minister gives notice that he hereby authorizes and permits the insurance of the War Material specified in the above-mentioned notices.

30th June, 1916.

## The Declaration of London.

In the House of Commons, on the 28th ult., Lord R. Cecil, replying to Mr. Hewins, said:—The chief purpose of the conferences which I attended in Paris was to consider whether it was desirable for the Allies to continue their partial adoption and enforcement of the Declaration of London. After careful consideration the British and French Governments have decided in the negative, and I hope that the other Allied Governments will concur in this decision. His Majesty will be advised in due course to issue an Order in Council withdrawing the successive Orders in Council which have been issued adopting with modifications the Declaration of London. A joint statement will also be issued explaining the reasons for this step. The opportunity was also taken to discuss with the French Government various minor matters connected with the blockade in order that the naval operations of the Allies should be co-ordinated to the utmost possible extent.

## The Blockade of Germany.

In the House of Commons, on Wednesday, Lord R. Cecil, replying to Major Hunt, said:—Under modern conditions of warfare it is impossible to exercise the belligerent right of search satisfactorily on the high seas. Hence it has become necessary to send into a British port for search all, or almost all, ships proceeding to ports in neutral countries adjacent to Germany which do not voluntarily call at such ports. There the search takes place, and it is only after such search that any judgment can be formed as to the probable ultimate destination of the cargo carried by the vessel. The data for such a judgment include the nature of the cargo, the character of the consignors and consignees, the amount of similar articles recently imported into the neutral country for which the ship is bound, and, it may be, other information of a secret character which has come into the hands of His Majesty's Government. All information bearing on these and other relevant points is collected in London, and it is therefore in London that the question is necessarily determined whether there are any grounds for putting into the Prize Court the ship, the cargo, or any part of it. To put into the Prize Court all vessels and their cargoes which are sent into port as explained above, as apparently my hon. friend suggests, would be neither just nor wise.

## Financing of Overseas Contracts.

The President of the Board of Trade has appointed a Committee to consider the best means of meeting the needs of British firms after the war as regards financial facilities for trade, particularly with reference to the financing of large overseas contracts and to prepare a detailed scheme for that purpose.

The Committee will consist of:—

Lord Faringdon (Chairman).
Mr. B. P. Blackett, C.B.
Sir W. H. Clark, K.C.S.I., C.M.G.
Mr. F. Dudley Docker, C.B.
Mr. Gaspard Farrer.
Mr. W. H. N. Goschen.
Right Hon. F. Huth Jackson.
Mr. Walter Leaf.
Hon. Algernon Mills.
Mr. J. H. Simpson; and
Mr. R. Vassar-Smith.

Mr. Hartley Withers will act as secretary to the Committee.

Lord Faringdon, better known as Sir Alexander Henderson, is, says the *Times*, chairman of the Great Central Railway and member of Lord Curzon's Shipping Control Committee; Mr. Blackett is a Treasury official; Sir W. H. Clark was formerly in the Board of Trade and afterwards member of Council in India for Commerce and Industry; Mr. Dudley Docker is chairman of the Metropolitan Carriage, Wagon and Finance Company; Mr. Farrer is a partner in Baring Brothers; Mr. Goschen is a member of the firm of Frühling & Goschen; Mr. Huth Jackson, of Frederick Huth & Co., is a director of the Bank of England; Mr. Leaf is chairman of the London County and Westminster Bank; Mr. Mills is a partner in Glyn, Mills, Currie & Co.; Mr. Simpson is an Indian Civil Servant, and was formerly Registrar of Co-operative Credit Societies in the United Provinces; and Mr. Vassar-Smith is chairman of Lloyds Bank.

## County Court Emergency Rules

COURTS (EMERGENCY POWERS).

THE COUNTY COURTS (EMERGENCY POWERS) RULES, 1916 (No. 3), DATED 26TH JUNE, 1916, MADE BY THE LORD CHANCELLOR FOR COUNTY COURTS UNDER THE COURTS (EMERGENCY POWERS) ACT, 1914 TO 1916.

*Preliminary.*

*Application, commencement, citation and construction of Rules.*]—The following Rules under the Courts (Emergency Powers) Acts, 1914 and 1916, shall apply to the County Courts and to the City of London Court, which shall for the purposes of these Rules be deemed to be a County Court.

These Rules may be cited as the County Courts (Emergency Powers) Rules, 1916 (No. 3), and shall come into operation forthwith.

These Rules shall be read and construed with the County Courts (Emergency Powers) Rules, 1914, and the Rules amending the same (herein referred to as the Emergency Rules), and expressions used herein shall have the same meaning as the like expressions used in those Rules.

1. *Amendment of Rule* 9.]—(1) Rule 9 of the Emergency Rules, 1914, paragraph (*a*), shall be read as if the words "or to appoint a receiver of mortgaged property" were inserted therein after the words "any property."

(2) Paragraph (*b*) of the said Rule shall be read as if the words "or to sell in lieu of foreclosing" were inserted therein after the words "to foreclose."

2. *Amendment of Rule* 10.]—Rule 10 of the Emergency Rules, 1914, paragraph (1), sub-paragraph (ii), is hereby annulled, and the following paragraph shall stand in lieu thereof, viz.:—

"(ii) in the case of an application for leave to take, resume, or enter into possession of any property, or to appoint a receiver of any mortgaged property, or to exercise any right of re-entry, or to foreclose, or to sell in lieu of foreclosing, or to realize any security on any premises, to the court in the district of which the property or premises is or are situate."

3. *Amendment of Form* 5.]—(1) The words "[*or* to appoint a receiver of certain property (*describing the same*) mortgaged by you to him]" shall be added to paragraph (*c*) of the Schedule to Form 5 in the Appendix to the Emergency Rules, after the words "situate at ."

(2) The words "or to sell in lieu of foreclosing" shall be inserted in paragraph (*e*) of the said Schedule after the words "foreclose on."

4. *Amendment of Form* 6.]—(1) The words "[*or* to appoint a receiver of certain property (*describing the same*) mortgaged to him by the Respondent]" shall be added to paragraph (*c*) of the Schedule to Form 6 in the Appendix to the said Rules (which was prescribed by the Emergency Powers Rules, 1915 (No. 2) after the words "situate at ."

(2) The words "or to sell in lieu of foreclosing" shall be inserted in paragraph (*e*) of the said Schedule after the words "foreclose on."

The 26th day of June, 1916.

(Signed) BUCKMASTER, C.

## Increase of Rent and Mortgage Interest (War Restrictions), England.

THE INCREASE OF RENT AND MORTGAGE INTEREST (WAR RESTRICTIONS) RULES, 1916 (No. 2), DATED 26TH JUNE, 1916, MADE BY THE LORD CHANCELLOR UNDER THE INCREASE OF RENT AND MORTGAGE INTEREST (WAR RESTRICTIONS) ACT, 1915, AS AMENDED BY THE COURTS (EMERGENCY POWERS) (No. 2) ACT, 1916.

*Preliminary.*

*Application, citation, commencement and construction of Rules.*]—The following Rules under the Increase of Rent and Mortgage Interest (War Restrictions) Act, 1915, as amended by section 2 of the Courts (Emergency Powers) (No. 2) Act, 1916, shall apply to the County Courts and to the City of London Court, which shall for the purposes of these Rules be deemed to be a county court.

These Rules may be cited as the Increase of Rent and Mortgage Interest (War Restrictions) Rules, 1916 (No. 2), and shall come into operation on the tenth day of July, 1916.

These Rules shall be read and construed with the Increase of Rent

and Mortgage Interest (War Restrictions) Rules, 1916 (herein called the Principal Rules), and expressions used herein shall have the same meaning as the like expressions used in those Rules.

*Application for Order authorising Grant of New Lease under Section 2 of the Courts (Emergency Powers) (No. 2) Act, 1916.*

1. *Application for order authorising grant of new lease.*]—An application to a county court under section 2 of the Courts (Emergency Powers) (No. 2) Act, 1916 [6 & 7 Geo. 5, c. 18, s. 2], for an order authorising the grant of a new lease for a term of twenty-one years or upwards of a dwelling-house to which the Increase of Rent and Mortgage Interest (War Restrictions) Act, 1915, applies, in consideration for which a fine, premium, or other like sum in addition to the rent is required, may be made—

(*a*) to the court in the district of which the dwelling-house is situate: or

(*b*) to the court in the district of which the proposed lessee resides or carries on business: or

(*c*) if the proposed lessor resides or carries on business in the district of any court mentioned in section 84 of the County Courts Act, 1888, and the proposed lessee resides or carries on business in the district of any other court mentioned in that section, either to the court in the district of which the proposed lessor resides or carries on business, or to the court in the district of which the proposed lessee resides or carries on business.

2. *Application by lessor.*]—The application shall be made by the proposed lessor, on notice in writing entitled in the matter of the Acts.

3. *Consent by lessee.*]—The lessor may file with the notice a consent in writing to the application, signed by the proposed lessee or his solicitor.

4. *Service on lessee.*]—If such consent is not filed, the notice shall be served on the proposed lessee in accordance with Rule 6 of the Principal Rules.

5. *Application of Rules.*]—Rules 7 to 10 of the Principal Rules shall apply to the proceedings on the application.

6. *Order on hearing.*]—On the hearing of the application, or at any adjournment thereof, the court, on proof of service of the notice, if a consent by the proposed lessee is not filed, and he does not appear, may, if satisfied that the terms of the proposed tenancy are on the whole not less favourable to the tenant than the terms on which the dwelling-house was previously let, authorise the grant of the proposed lease: or if not so satisfied the court may either refuse the application, or make such other order in the matter and subject to such conditions as the court may think fit.

7. *Preparation and service of order.*]—When the court has given its decision, an order in accordance therewith shall be prepared, sealed, signed and served in accordance with Rule 13 of the Principal Rules.

8. *Power to revoke or vary certain orders.*]—Any order made under these Rules may, before a lease has been granted in pursuance thereof, be suspended, discharged or varied in accordance with Rule 14 of the Principal Rules.

9. *Practice and procedure on application.*]—Subject to the provisions of these Rules, the practice and procedure of the court on interlocutory applications shall apply to proceedings on an application under these Rules.

10. *Fees.*]—A fee of 10s. shall be payable under Schedule B., Part I., of the Treasury Order regulating Fees in the County Courts on an application under these Rules for an order authorising the grant of a lease; and the provisions of Rule 16 of the Principal Rules shall apply.

11. *Costs.*]—(1) The proposed lessor shall bear his own costs of any application under these Rules.

(2) If a consent by the proposed lessee is not filed, and he is served and appears on the hearing of the application, the court may, in its absolute discretion, if satisfied that he acted reasonably in appearing, order the proposed lessor to pay his costs, and may either fix the amount of such costs, or allow them on the scale applicable to an interlocutory application in an action for a sum exceeding £20 but not exceeding £50.

12. *Forms.*]—The forms in the Appendix hereto, with such modifications as may be necessary, shall be used for applications and orders under these Rules.

The 26th day of June, 1916.

(Signed) BUCKMASTER, C.

We, the undersigned, two of the Commissioners of His Majesty's Treasury, do hereby, with the consent of the Lord Chancellor, order that the several fees specified in Rule 10 of the foregoing Rules shall be taken on the proceedings therein mentioned in lieu of all other fees on the proceedings therein set forth.

(Signed) GEOFFREY HOWARD.
GEO. H. ROBERTS.

I concur in the above order as to fees.

(Signed) BUCKMASTER, C.

The 26th day of June, 1916.

APPENDIX.

1.

*Notice of Application for Order authorising the Grant of a new Lease.*

In the County Court of , holden at .

In the Matter of the Increase of Rent and Mortgage Interest (War Restrictions) Act, 1915, and the Courts (Emergency Powers) (No. 2) Act, 1916,

and

In the Matter of the proposed grant of a new lease by *A.B.* ,
of ,
to *C.D.* .
of ,
of premises known as .

TAKE NOTICE, that I intend to apply under the above-mentioned Acts to the Court [*where application is intended to be made to the Registrar at his office, add* at the office of the Registrar, situate at ] on , the day of , at the hour of in the noon, for an order authorising the grant by me to , of of a new lease for the term of years of a certain dwelling-house [*or* of part, that is to say (*here specify the part*) of a certain dwelling-house], situate at , and known as ,

at a rent of £ , and in consideration of a fine [premium *or* sum] of £ , in addition to the rent.

[*Add, if proposed lessee's consent is filed,*

.]

The written consent of the said to this application is hereto annexed.

Dated this day of , 19 .

(Signed) Applicant,

[*or* Solicitor for the Applicant].

To the Registrar of the Court .

[*Add, if lessee is to be served,*
and to *C.D.*,
of .]

2.

*Order on Application for Order authorising the Grant of a New Lease.*

[*Title as in Application.*]

On the application of
for an order authorising, &c. (*as in application*)
And upon hearing
This Court being satisfied that the terms of the proposed tenancy are on the whole not less favourable to the proposed tenant than the terms on which the said premises were previously let, doth pursuant to section 2 of the Courts (Emergency Powers) (No. 2) Act, 1916, authorise the applicant to grant the proposed new lease.

[*Or*, This Court not being satisfied that the terms of the proposed tenancy are on the whole not less favourable to the proposed tenant than

the terms on which the said premises were previously let, doth not think fit to authorise the applicant to grant the proposed new lease [*add, if so ordered*, but doth order that the applicant be and he is hereby authorised to grant a lease of the said premises on the following terms, that is to say—

(*here set out terms*)

[*Add, if so ordered,*

And it is ordered that the applicant do on or before the day of , pay to the said *C.D.* his costs of this application, which are hereby allowed at the sum of £ .

[*Or*, And the Court doth not think fit to make any order as to the costs of this application]].

Dated this day of , 19 .

By the Court,

Registrar.

To

(*the proposed lessor and lessee, naming them*].

# Societies.

## General Council of the Bar.

BARRISTERS AND THE WAR.

The secretary of the General Council of the Bar (2, Hare-court, Temple, E.C.) would be glad if any barristers serving in His Majesty's Forces, who have not so far communicated with him, would kindly send him as soon as possible their names, professional addresses, regiment and military rank. He would at the same time be grateful for any information with regard to transfers, promotions, distinctions and casualties affecting the lists already published. It is proposed to issue shortly a revised list, which it is desired should be as comprehensive and correct as possible. The names of about 1,100 barristers so serving have already been received, but it is thought that there must now be further names which should be added to the list.

## The Belgian Lawyers Relief Fund.

The following further donations have been received in response to the second appeal :—

Amounts already acknowledged, £1,452 13s. 11d.

| | £ | s. | d. |
|---|---|---|---|
| The Master, Treasurer and Benchers of the Middle Temple ... ... ... ... ... ... ... | 105 | 0 | 0 |
| The Right Hon. Sir R. B. Finlay, K.C., M.P ... | 26 | 5 | 0 |
| The Manchester Law Society ... ... ... ... | 25 | 0 | 0 |
| "J. H." ... ... ... ... ... ... ... | 21 | 0 | 0 |
| The Midland and Oxford Bar Lodge ... ... ... | 5 | 5 | 0 |
| Samuel Garrett, Esq. ... ... ... ... ... | 5 | 5 | 0 |
| Herbert T. Wade, Esq. ... ... ... ... ... | 5 | 0 | 0 |
| R. W. Rylands, Esq. ... ... ... ... ... | 3 | 3 | 0 |
| Tatham, Worthington, & Co. ... ... ... ... | 3 | 3 | 0 |
| E. H. Coumbe, Esq. ... ... ... ... ... | 3 | 3 | 0 |
| J. E. W. Rider, Esq. ... ... ... ... ... | 3 | 3 | 0 |
| Cunliffe, Greg, & Co. ... ... ... ... ... | 3 | 3 | 0 |
| Brett, Hamilton, & Tarbolton ... ... ... ... | 3 | 3 | 0 |
| Walter Dowson, Esq. ... ... ... ... ... | 2 | 12 | 6 |
| W. C. Thorne, Esq. ... ... ... ... ... | 2 | 2 | 0 |
| C. Stafford Crossman, Esq. ... ... ... ... | 2 | 2 | 0 |
| G. V. Vesey Fitzgerald, Esq., K.C. ... ... ... | 2 | 2 | 0 |
| Milne, Bury, & Lewis ... ... ... ... ... | 2 | 2 | 0 |
| J. W. Roberts, Esq. ... ... ... ... ... | 2 | 2 | 0 |
| Cree & Turner ... ... ... ... ... ... | 2 | 2 | 0 |
| P. H. Fox, Esq. ... ... ... ... ... ... | 2 | 0 | 0 |
| Lynde & Braithwaite ... ... ... ... ... | 1 | 1 | 0 |
| James McDonald, Esq. ... ... ... ... ... | 1 | 1 | 0 |
| Charles Steele, Esq. ... ... ... ... ... | 1 | 1 | 0 |
| Harry R. Lewis, Esq. ... ... ... ... ... | 1 | 1 | 0 |
| W. C. Sandford, Esq. ... ... ... ... ... | 1 | 1 | 0 |
| W. Clifton, Esq. ... ... ... ... ... ... | 1 | 1 | 0 |
| John R. French, Esq. ... ... ... ... ... | 1 | 1 | 0 |
| F. H. Stapley, Esq. ... ... ... ... ... | 1 | 1 | 0 |
| F. H. Carson, Esq., K.C ... ... ... ... | 1 | 0 | 0 |
| E. B. Sugden, Esq. ... ... ... ... ... | 1 | 0 | 0 |
| Charles E. R. Davy, Esq. ... ... ... ... | 0 | 10 | 6 |
| T. Howell Davies, Esq. ... ... ... ... | 0 | 10 | 6 |

Casement's appeal against his sentence was lodged on the 29th ult. Mr. M. F. Doyle, the American lawyer who has been assisting in the defence, will, it is understood, says the *Times*, remain in London until the appeal is heard.

# The Trial of Casement.

The following letters from Sir Harry B. Poland and Sir Homewood Crawford have appeared in the *Times* (1st and 3rd July) :—

Sir,—In the administration of the criminal law in England the tendency of judges and juries is to give every latitude to the accused—I may also say to favour him—but with some diffidence I should like to make a mild protest against Casement's having been allowed to make the second speech after the jury had found him guilty. When a man who has been convicted by the jury is called upon to say why judgment should not be passed upon him according to law, he is only entitled to move on some point of law in arrest of judgment. In cases of treason, after the prisoner's counsel has addressed the jury, the presiding judge always asks the prisoner if he wishes to add anything to what his counsel has said. In *Frost's case* (4 State Trials, N.S., 86), after Sir Frederick Pollock had addressed the jury for the prisoner and witnesses had been called for the defence, and Mr. Kelly had also addressed the jury for the prisoner, Tindal, C.J., said :—

> "John Frost, now is the proper time for you to be heard if you wish to address anything to the gentlemen of the jury beyond what your learned counsel have said. You will not be allowed to be heard after the Solicitor-General has closed the case on the part of the prosecution."

Frost was so well satisfied with what his counsel had said that he declined saying anything. Again, in *Smith O'Brien's case* (7 State Trials, N.S., 276), after his counsel had addressed the jury he was addressed in similar terms by Blackburne, L.C.J., but he also declined to address the jury.

Now, Casement was allowed to address the jury before his counsel addressed the jury, and was fully heard, and he had no right to make another long speech after the verdict of the jury; and it is obvious that this course is an undesirable one, because the counsel for the Crown had no opportunity of replying to it. It might be of the highest importance in some cases that a speech made by the prisoner should be replied to. I therefore earnestly trust that what was allowed in this case ought not to be treated as a precedent. It is all very well to be indulgent to a prisoner, but in the interest of the State it is not desirable to be unfair to the Crown.

In a letter which you did me the honour to publish in the *Times* of 29th May I pointed out the necessity of an amendment of the law relating to trials of high treason, and certainly the trial of Casement has shewn that this is highly desirable, both in the interest of the prisoner as well as of the Crown.

HARRY B. POLAND.

Inner Temple.

Sir,—Permit me to add a few words to the "mild protest" made by Sir Harry Poland, K.C., in his very interesting letter in the *Times* of to-day against Casement's having been allowed to make a second speech after the jury had found him guilty. Sir Harry Poland refers to the observations of several eminent judges in former State trials in support of his contention that such a dangerous precedent ought not to be created, as being unfair to the Crown.

May I be allowed space to remind Sir Harry Poland of the course taken upon a somewhat similar occasion by the late Lord Chief Justice Cockburn, when presiding at the Old Bailey at the trial of Henry Wainwright, who, after a hearing extending over nine days, was found guilty of the murder of Harriet Lane? The then Attorney-General, the late Sir John Holker, Q.C., led Sir Harry Poland for the Crown; and the trial excited more than usual public interest from the fact that the remains of the murdered woman were found in Henry Wainwright's possession more than twelve months after the murder! The importance of the case may be judged from the fact that the report of the summing-up of Sir Alexander Cockburn occupied eleven columns of the *Times* of 2nd December, 1875. When the jury returned their verdict of "Guilty," the prisoner was asked, in the usual way, by the Clerk of Arraigns, if he had anything to say why the Court should not proceed to pronounce sentence of death upon him under his conviction. Wainwright, who bore the reputation of being an eloquent speaker, at once proceeded to deliver what would have been a long speech but for the timely interruption of the Lord Chief Justice, who quickly observed :—"I cannot allow you to make a speech. The only question put to you is whether you have anything to say why sentence should not be passed upon you." Wainwright then in the most dramatic manner affirmed that he was not the murderer of the remains found in his possession, and that he quitted the dock "with a calm and quiet conscience." I happened to be one of the Under-Sheriffs at the time, and I am never likely to forget the crushing but solemn admonition administered by Sir Alexander Cockburn to the prisoner "for calling God to witness the rash assertion which had just issued" from the prisoner's lips.

Junior Carlton Club, 1st July. HOMEWOOD CRAWFORD.

Judge Roberts, at Clerkenwell County Court, on the 29th ult., protested against the practice, which he described as most improper, of adjourning cases simply to suit the convenience of solicitors. He hoped public notice would be taken of the fact that the practice was growing, and, if it went on, some steps must be taken by the Rule Committee to put a stop to it.

# Conduct of Prosecuting Counsel.

During the hearing of a case in the Court of Criminal Appeal on Tuesday, says the *Times*, in which the appellant had been convicted of having had carnal knowledge of a girl under sixteen, Mr. S. R. C. Bosanquet, on behalf of the appellant, complained that at the trial the counsel for the prosecution in his final speech had appealed to the jury "to protect young girls" from men like the appellant.

Mr. Bosanquet said that there was a growing tendency on the part of counsel for the prosecution to conduct cases as advocates rather than as ministers of justice. That was wrong. He referred to the language of Mr. Justice Crompton in *Reg.* v. *Rudland* (4 F. & F. 495), and in *Reg.* v *Puddick* (4 F & F. 497).

In his judgment Mr. Justice Avory said that Mr. Bosanquet's criticism was one rather addressed to a matter of taste than to a matter of actual irregularity in the proceedings. It was quite true that prosecuting counsel throughout a case ought not to struggle for a verdict against a prisoner, but rather to bear themselves in the character of ministers of justice assisting in the administration of justice. Such an observation as had been complained of might not be good taste and might not be strictly in accordance with the character which prosecuting counsel ought always to bear in mind. But it was impossible that the jury should have been misled by it into finding the appellant guilty unless they had been satisfied by the evidence that he was.

# Law Students' Journal.

## Calls to the Bar.

The following gentlemen were called to the Bar on Wednesday :—

Lincoln's Inn.—J. P. C. Rigby; J. G. Baker; G. J. M. D'Cruz; C. F. Inniss.

Inner Temple.—N. W. Parry de Heviningham, Oxford; C. B. M. Childs, B.A., Oxford; T. W. Price, London; I. Rankine, B.A., Oxford; G. W. Taylor, B.A., Camb.; D. P. H. Hall, B.A., Oxford; A. L. Gardiner, B.A., Camb.; M. J. Hart, B.A., Oxford.

Middle Temple.—R. S. Chapman; E. C. H. Lawson (Honours B.A.); H. S. Roberts, B.A., Camb.; Captain J. S. Lithiby, B.A., Oxon., 2nd Class, Classical Mods., 1913; H. Maden, B.A., Oxon., 3rd Class, Jurisprudence, 1914; C. Malone; C. R. H. Hobbs; E. J. Van den Berg ("Waldia Pearson" Prize, Univ. of the Cape, and Kitchin Gold Medal); J. W. Hall, M.A., B.C.L., Oxon. (Classical Honours); C. Friedlander.

Gray's-inn.—Captain H. B. F. Davies, 7th Manchester Regt., exhibitioner of Pemb. Coll., Camb., B.A.; R. A. Bateman, Inns of Court O.T.C., B.Sc., Lond.; C. F. Oörloff; Second Lieutenant W. L. Grech, Royal Flying Corps, LL.D., Malta Univ., Advocate in the Superior Courts of Malta; Jules Mahabir; C. T. W. E. Worrell, Univ. of Lond., Trinidad Government scholar.

The above list does not include the names of gentlemen who apparently will not practise in this country.

# Obituary.

Qui ante diem periit,
Sed miles, sed pro patria.

## Lieutenant Ronald H. Spinney.

Lieutenant Ronald Henry Spinney, Coldstream Guards, who has died of wounds received a week ago, was the son of Mr. and Mrs. A. G. Spinney, of Marmora-road, Honor Oak, S.E. and was born in 1887. He was educated at Salisbury, and was articled to his uncle, the late William Trethowan, of Messrs. Nodder & Trethowan, solicitors, of Salisbury. He obtained his articles at the age of twenty-one, but soon after was appointed to a responsible position in a commercial enterprise in Java. He returned to enlist in the Army, joining the Artists Rifles in March, 1915. In the following June he was gazetted second-lieutenant in the Coldstream Guards, and became lieutenant after going to the front. Two of Lieutenant Spinney's brothers have seen active service and have attained the rank of lieutenant, while a third is on home service.

## Lieutenant Thomas E. Nicholson

Lieutenant Thomas E. Nicholson, Northumberland Fusiliers, reported killed, aged twenty-five, was the son of Mr. W. J. Nicholson, Chief Constable of Berwick. He served his articles with Mr. William Weatherhead, solicitor, of Berwick, and was admitted in 1913. At the outbreak of war he was with Mr. Septimus Ward, of Newcastle. Lieutenant Nicholson was one of the best left-handed batsmen on the Border and a good hockey player. He had been patrol leader of Boy Scouts.

## Captain Cecil Lyon Hart.

Captain Cecil Lyon Hart, Duke of Wellington's Regiment, was the only son of Mr. and Mrs. M. A. Hart, of 12, Alexandra-mansions, West End-lane. He was born in Kimberley, South Africa, was educated at University College School, and continued his studies at University College. He entered as a law student at the Inner Temple, having passed his Bar examinations, and was on the point of being called on the outbreak of the war, when he immediately enlisted. He was deeply interested in the Jewish Lads' Brigade, of which he was one of the most useful officers, being greatly beloved by his boys. Captain Hart fell on 1st July, in his twenty-seventh year.

## Lieutenant Harold A. Llewellyn.

Lieutenant Harold A. Llewellyn, South Wales Borderers, was the only son of the late Dr. J. D. Llewellyn, formerly of Bargoed, South Wales. He was born in Melbourne, Australia, and educated at Cheltenham College, where he played for his school fifteen and won several prizes for running. He joined the Army as a private at the outbreak of the war, being then an articled pupil with Messrs. Downing & Handcock, solicitors, Cardiff, and later was granted a commission in the South Wales Borderers. He was accidentally killed on 14th June, aged twenty-five years.

# Legal News.

## Changes in Partnerships.

### Dissolution.

Herbert Roger Sadd and Frank Harold Stollard, solicitors (Roger Sadd and Stollard), 56, Gresham-street, in the city of London. June 30. F. H. Stollard continues to practise at the above address. [*Gazette*, July 4.

## General.

Mr. Montagu Sharpe, in charging the Grand Jury at the Middlesex Sessions last Saturday, said there were only seven cases for trial, which was the average number since the outbreak of war. Before the war the average number for some years had been twenty per sessions.

According to the Berlin newspapers, the sentence of penal servitude on Herr Liebknecht will, in the event of his appeal failing, deprive him of the right to practise his profession as a solicitor, but will not interfere with his position as a member of the Reichstag or the Prussian Diet.

A youth who was convicted of theft at Kingston-on-Thames on Monday, and who was said to have been "led away by picture palaces," was bound over under the Probation Act for six months, and the Bench made it a condition that for that time he should abstain from going to cinemas.

At an inquest at Middlesbrough on the 22nd ult., on William Smith, aged sixty-three, of Jarrow, whose body was found in the River Tees on Monday, the jury returned a verdict that he had been accidentally strangled by a police-constable and a cviilian who recovered the body. Owing to the peculiar position of the body they had to pass a rope round the man's neck to get him out of the water. A doctor stated that the man was probably alive before this, as the *post-mortem* revealed no evidence of drowning. The jury exonerated the officer from blame.

In the House of Commons, on the 28th ult., Mr. Harcourt, replying to Major Hunt, who asked why about 400 German firms were still allowed to do business in this country, said: The work of eliminating enemy interests in businesses carried on in this country, whether by orders under section 1 of the Trading with the Enemy Amendment Act, 1916, or by vesting orders under section 4 of the Act, is proceeding with all possible rapidity. It is proposed shortly to issue a statement shewing the nature and extent of the work of the Board of Trade's Advisory Committee in this matter. It will be realised that each case must necessarily receive close investigation in order that injury to British interests may be minimised. In the meantime all the more important businesses not dealt with in the above manner have been placed under supervision, and steps are being taken to extend supervision to the remainder.

A point of interest affecting extinction of lights was, says the *Times*, decided by Mr. Justice Rowlatt, sitting in the King's Bench Division on the 23rd ult., in an action brought by the owners of the French steamer *Astree* against the underwriters of the war risk insurance. Briefly, *The Astree* was wrecked near Cap de la Hague early in the morning of 23rd January, and it was contended that she got there because the light on the cape had been extinguished on account of the war. The ship was insured against war risks on French conditions, which specifically include extinction of lights, whereas the English terms do not, and the owners claimed against the war risk underwriters. Mr. Justice Rowlatt pointed out that underwriters in subscribing to a policy covering the risk of extinction of lights depart from the long-established principle of *proxima causa* in establishing the incidence of loss in marine insurance, because the extinction of lights, while facilitating strandings or collisions, can never be exactly the proximate cause

of casualty. Therefore, when this risk is accepted, immediate proximate cause of the casualty may be "skipped over." In the present case, though, the Judge came to the conclusion that there was just a chance that if the light had been working the captain would have seen it; but he could not find convincing evidence that the light would have saved the ship. The weather was bad, and the Judge found that the captain got out of his course owing, probably, to something being the matter with the compass or probably owing to inefficient navigation. The loss was due to marine perils and not to war risks.

At the Denbighshire Quarter Sessions, says the *Times*, there was a discussion on the question of giving counsel briefs in cases before the Court under the Criminal Justice Administration Act, 1914. The question had been raised at the previous Quarter Sessions by Mr. Morris on behalf of the North Wales Bar, as a case had been dealt with in which no counsel was given a brief. Mr. Morris contended that, in the interests of justice, there should be a brief, as certain facts had to be proved. The Court decided to put the matter on the agenda for Friday, the 30th ult. Mr. Jelf Petit, the chairman, said that, where the expense to the county had to be considered, it was necessary that all the facts should be clearly put before the Court. It was not an unimportant matter, as the Court could send a prisoner to Borstal for three years. If he consulted his own feelings he would give briefs to counsel in all the cases. The Clerk of the Peace read a number of replies from other counties, and pointed out that in Cheshire and Shropshire counsel were given briefs. His own view was that counsel should receive briefs. The Court decided to give briefs to counsel in every case.



# The Property Mart

## Forthcoming Auction Sales.

July 12.—Messrs. ROBINS & HINE, at Wolverhampton: Tithe Rent Charges (see advertisement, back page, this week).

July 19.—Messrs. HENRY CHAPMAN & Co., at the Mart, at 2: Freehold and Leaseholds (see advertisement, back page, this week).

July 25.—Messrs. HAMPTON & SONS, at the Mart: Country Residence (see advertisement, back page, this week).

# Court Papers.

## Supreme Court of Judicature.

ROTA OF REGISTRARS IN ATTENDANCE ON

| Date. | Emergency Rota. | Appeal Court No. 1. | Mr. Justice Neville. | Mr. Justice Eve. |
|---|---|---|---|---|
| Monday July 10 | Mr. Greswell | Mr. Synge | Mr. Farmer | Mr. Jolly |
| Tuesday ..... 11 | Bloxam | Church | Synge | Greswell |
| Wednesday .. 12 | Jolly | Farmer | Bloxam | Borrer |
| Thursday .... 13 | Borrer | Bloxam | Goldschmidt | Synge |
| Friday..... 14 | Goldschmidt | Greswell | Leach | Farmer |
| Saturday .... 15 | Leach | Jolly | Church | Bloxam |

| Date. | Mr. Justice Sargant. | Mr. Justice Astbury. | Mr. Justice Younger. | Mr. Justice Peterson. |
|---|---|---|---|---|
| Monday July 10 | Mr. Bloxam | Mr Church | Mr. Leach | Mr. Borrer |
| Tuesday ..... 11 | Jolly | Farmer | Goldschmidt | Leach |
| Wednesday .. 12 | Synge | Goldschmidt | Church | Greswell |
| Thursday .... 13 | Farmer | Leach | Greswell | Jolly |
| Friday..... 14 | Church | Borrer | Jolly | Bloxam |
| Saturday .... 15 | Goldschmidt | Greswell | Borrer | Synge |

# Winding-up Notices.

## JOINT STOCK COMPANIES.

### LIMITED IN CHANCERY.

*London Gazette.*—FRIDAY, June 23.

BIRDCRAFT'S, LTD.—Creditors are requested, on or before July 22, to send particulars, in writing, of such debts, claims and demands, to Edward Wood, 57, Culverley rd, Catford liquidator.

CRABTREE & PICKLES, LTD.—Creditors are required, on or before July 21, to send their names and addresses, and the particulars of their debts or claims, to George Proctor, 3, Grimshaw st, Burnley, liquidator.

HYGIENIC CONSTRUCTIONS & PORTABLE BUILDINGS, LTD.—Creditors are required, on or before July 16, to send their names and addresses, and the particulars of their debts or claims, to George Stanhope Pitt, 140, Leadenhall st, Controller

COKE OVENS & BY-PRODUCTS CO, LTD.—Creditors are required, on or before July 24, to send their names and addresses, and the particulars of their debts or claims, to Mr William Hutton, 95, Gresham st, liquidator.

## JOINT STOCK COMPANIES.

### LIMITED IN CHANCERY.

*London Gazette.*—TUESDAY, June 27.

JOHN TURPIN, LTD.—Creditors are required, on or before Aug. 8, to send in their names and addresses, and the particulars of their debts or claims, to John Henry Trease, Parade chmbrs, South Parade, Nottingham, liquidator.

TIBBINGTON COLLIERIES & BRICKWORKS, LTD.—Creditors are required, on or before July 28, to send their names and addresses, and the particulars of their debts or claims, to Samuel Wells Page, 30, Lichfield st, Wolverhampton, liquidator.

# Resolutions for Winding-up Voluntarily.

*London Gazette.*—FRIDAY, June 23.

Merchants' & Manufacturers' Sales Syndicate (European Department) Ltd.
Rex Consolidated, Ltd.
Galvo Box Co, Ltd.
Whitcombe & Co, Ltd.
Park Hotel (Colwall), Ltd.
H. Umpleby, Ltd.
Brazil Exterior, Ltd.
Machynis Brick & Tile Co, Ltd.
Newman's Patent Hygienic Cirmulated Skewer Co, Ltd.
Henry Grimshaw & Son, Ltd.
New Veloce Motors, Ltd,
Birdcraft's Ltd.
H. and E. Syndicate Ltd.
St. Clair & Co, Ltd.
Saunders & Shepherd Ltd.
Mansfield Mineral Water Co, Ltd.

*London Gazette.*—TUESDAY, June 27.

The U. D. B. Ltd.
Vulcan Oilfields Ltd.
Reaper Fishing Co, Ltd.
Ranter Fishing Co, Ltd.

# Creditors' Notices.

## Under 22 & 23 Vict. cap. 35.

### LAST DAY OF CLAIM.

*London Gazette.*—TUESDAY, June 27.

ALLEN, HANNAH, Whitefield, Lancs July 31 Pickstone, Radcliffe, Lancs
BACON, SUSANNA FRANKLIN, Great Dunmow, Essex July 29 Wade & Co, Dunmow Essex
BARLOW, ANNIE, Bordesley, Birmingham, Ironmonger Aug 4 Tarleton & Butlin, Birmingham
BARNES, ANDREW, Accrington, Grocer Aug 8 Slinger, Accrington
BASSETT, WILLIAM, Sloane st, Florist and Fruiterer July 28 Child & Child, Sloane st
BAXTER, LUCINDA, Stourbridge, Worcester Aug 1 Harward & Evers, Stourbridge
BEDFORD, ELIZA, Sutton, Surrey Aug 1 Tapp & Co, Woodstock st, Oxford st
BEVAN, HARRY, Ashton under Lyne, Labourer July 29 Baguley, Ashton under Lyne
BIRCH, ESTHER, Saddleworth, Yorks July 25 Rowbotham, Oldham
BLACK, ARTHUR EDWARD, Liverpool, Sharebroker Aug 1 Bailey & Atkinson, Liverpool
BLACKBURN, CLEMENT, Brighouse, Cotton Spinner Aug 1 Masser & Co, Nottingham
BOCKETT, Rev EDWARD ARTHUR BRADNEY, Southsea Aug 1 Walker & Co, Theobald's rd
BOYD, JAMES, Altrincham Sept 2 Addleshaw & Co, Manchester
CAUTLEY, Major WILLIAM XENHAM, Marytavy, Devon Aug 24 Mathews, Tavistock
CHISHOLM, ELIZA JANE LISTER, Sunderland July 28 J & W J Robinson, Sunderland
CORP, FRANCIS, Hull July 27 Feldman & Gosschalk, Hull
COX, CHARLES, Eastbourne July 22 Ashbridge, Fenchurch st
CROSS, JOHN, Rollscourt av, Herne Hill Aug 9 Nickinson & Co, Bedford sq
CROW, Rev HENRY OSWALD, Malvern, Worcester July 31 Trotter & Co, Bishop Auckland

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